



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 11, 1998

Mr. Rusty Renfroe, CLA  
City Attorney's Office  
City of Longview  
P.O. Box 1952  
Longview, Texas 75606-1952

OR98-1903

Dear Mr. Renfroe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117864.

The City of Longview (the "city") received a request for information relating to an incident that occurred on December 7, 1997, involving the requestor's client. You assert that the requested information is excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered your arguments and reviewed the information submitted.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The city has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. Section 552.103 applies only when a lawsuit has been filed or if litigation is reasonably anticipated. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Section 552.103 was designed to protect the interests of the state in adversary proceedings or in negotiations leading to the settlement thereof. Open Records Decision No. 301 (1982) (construing predecessor to section 552.103).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 (1986) at 4. Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.<sup>1</sup> Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 (1989) at 5 (litigation must be "realistically contemplated"). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

After considering your arguments, we conclude that you have shown that litigation is reasonably anticipated, and that most of the submitted documents relate to the anticipated litigation. However, you have not shown how offense report number 97-018672 relates to the anticipated litigation. Open Records Decision No. 638 (1996) (governmental body must explain how requested information relates to subject of litigation). Thus, you may not withhold offense report number 97-018672 under section 552.103. Additionally, basic information in a police offense report generally may not be withheld under section 552.103. Open Records Decision No. 362 (1983).

We note that offense report number 97-018672 contains a social security number, which may be excepted from public disclosure, and information excepted from public disclosure by section 552.130.

A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with 1990 amendments to the federal Social Security Act, § 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See* Open Records Decision No. 622 (1994). Based on the information you have provided, we are unable to determine whether the social security number at issue is confidential under this federal statute. We note, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number information, the city should ensure that the information is not confidential under this federal statute.

Section 552.130 provides in relevant part as follows:

- (a) Information is excepted from the requirement of Section 552.021 if the

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<sup>1</sup>In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

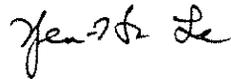
(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Therefore, you must withhold the driver's license number pursuant to section 552.130.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref: ID# 117864

Enclosures: Submitted documents

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