



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 2, 1998

Mr. Michael James
Police Chief
175 North 8th Street
Slaton, Texas 79364

OR98-2103

Dear Mr. James:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117826.

The City of Slaton (the "city") received a request for "any information pertaining to Officer Scott Sanders and Cpl. Tad Elis." You state that "as the disciplinary action records were generated for inter-departmental use only[,] then that portion may be excepted from disclosure." You also assert that "the disciplinary action portion" of the requested information is "excepted from disclosure under the litigation exception." The information you state the city seeks to withhold from disclosure is a letter from Lieutenant Karr to Officer Sanders dated September 17, 1997.

Section 552.103(a) of the Government Code, the "litigation exception," reads as follows:

(a) Information is excepted from [required public disclosure] if it is 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.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). When the opposing party in the litigation has seen or had access to requested information, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982).

In this instance, you have not established the applicability of section 552.103 to the requested information. Consequently, the city may not withhold the requested information from the requestor based on section 552.103. Since we do not understand your request to raise any other exceptions to disclosure, we conclude that the city must release the information.

We are resolving this matter with this 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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/mjc

Ref.: ID# 117826

Enclosures: Submitted documents

cc: Mr. Emilio E. Abeyta
Attorney at Law
820 Buddy Holly Avenue
Lubbock, Texas 79401-2702
(w/o enclosures)