



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 27, 1998

Ms. Julie B. Ross
Haynes & Boone, L.L.P.
201 Main Street, Suite 2200
Fort Worth, Texas 76102-3126

OR98-2507

Dear Ms. Ross:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119181.

The City of Coppell (the "city") received a request for employment records and related documents for seven named current or former city employees. You seek to withhold records pertaining to one of the named individuals, Michael A. Scott, under section 552.103 of the Government Code. You submitted a representative sample of the records in question.¹

Section 552.103(a) excepts from required public 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.

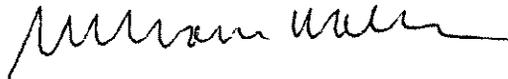
¹In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You advise that the subject of the records you seek to withhold, Mr. Scott, was a city police officer who was terminated on April 28, 1998. You provided a copy of an August 24, 1998, petition in which Mr. Scott has filed suit against the city for unlawful retaliation under Government Code sections 554.001 et seq., the "Whistleblower Act." You assert that the records at issue here "will certainly be relevant in the lawsuit and will likely be used as evidence."

Based on your representations, we conclude that you may generally withhold the requested records pertaining to Mr. Scott at this time under section 552.103. Please note, however, that, absent special circumstances, once information has been obtained by all parties to litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent Mr. Scott has seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a), except for information which is confidential by law.² Similarly, section 552.103(a) does not authorize withholding materials which have already been made available to the public. Open Records Decision No. 436 at 7 (1986).

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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 119181

Enclosures: Submitted documents

²Please note that in disclosing records already made available to Mr. Scott, or in releasing records once litigation is concluded or no longer anticipated, confidential information must be withheld. *See. e.g.* Government Code §§ 552.117 (peace officer address, telephone, social security, and family information), 552.352 (criminal penalties for distribution of confidential information).

cc: Mr. Ed Caldwell
601 Shadowcrest
Coppell, Texas 76102
(w/o enclosures)