



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 9, 1998

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

OR98-3014

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# 120291.

The City of Coppel (the "city") received a request for "[a]ll Internal Affairs Division documents for public employee Michael A. Scott which Scott authored, has seen, and to which Mr. Scott has had access (i.e. do not qualify for 552.103 exception)." You submit information you say is responsive to the request but seek to withhold it under section 552.103 of the Government Code.

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.

You advise that the individual who is the subject of the records you seek to withhold, Mr. Scott, was a city police officer who was terminated on April 28, 1998. You provide 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."

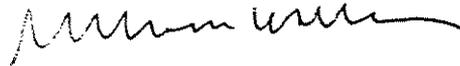
Based on your representations, we conclude that you have established that litigation to which the requested information relates is pending. However, absent special circumstances, once information has been obtained by all parties to litigation, either through discovery or otherwise, no section 552.103(a) 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. Similarly, section 552.103(a) does not authorize withholding materials which have already been made available to the public. Open Records Decision No. at 7 436 (1986).

We have reviewed the information you submitted. Most of it consists of memoranda or correspondence to or from Mr. Scott or his attorney. This material on its face indicates that Mr. Scott has seen or had access to it. It is thus not protected by section 552.103(a) and must be released. Another document, Coppell Police Department General Order No. 301.023, was presumably made available to Mr. Scott during his tenure with the police department. If that is the case, this document also falls outside the scope of the section 552.103 exception and must be released.

We have marked two documents which do not on their face indicate that Mr. Scott has seen or had access to them. If Mr. Scott has in fact not seen or had access to these documents, and so long as they have not been made available to the public, you may withhold these documents under section 552.103(a). Except as noted above, you must release the requested information.

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# 120291

Enclosures: Marked documents

cc: Mr. Arthur Kwast
P.O. Box 1397
Coppell, Texas 75019-1397
(w/o enclosures)