



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 14, 1998

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

OR98-3087

Dear Ms. Ross:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 120479.

The City of Coppell (the "city") received a request for various documents for "[a]ll Police Dept. public employees on Administrative Leave or terminated (fired and resigned), 1-01-98 to 9-11-98." You state that you have released most of the responsive documents to the requestor. You claim, however, that the submitted termination notices and resignation letter are excepted from disclosure under section 552.103 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The city must meet both prongs of this test for information to be excepted under section 552.103(a).

You have submitted evidence that the city either reasonably anticipates or is involved in litigation with three former employees: Lisa Andrus, M.A. Scott, and Jason Shanks. We have reviewed these employees' documents and conclude that they are related to their

¹In your original brief to this office, you raised section 552.101 as an exception to disclosure. You failed to explain in subsequent briefs to this office how section 552.101 applies to the submitted records. Consequently, we will not address your section 552.101 claim.

litigations. We note, however, that when the opposing party in the litigation has seen or had access to the requested records, 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, the requested documents were either provided to or obtained from the opposing parties in the litigations, therefore, these documents may not be withheld under section 552.103.

You state that Danny Harm is currently appealing his termination to a city appeal board. You also state that based on conversations between city representatives and Mr. Harm, you believe that Mr. Harm will file a lawsuit against the city if the city does not rescind his termination. After reviewing your arguments, we find that the prospect of litigation between the city and Mr. Harm is too speculative for section 552.103(a) to apply. Furthermore, you have not established that the appeal hearing should be considered litigation for the purposes of section 552.103(a). Consequently, the city must release Mr. Harm's termination notice as well.²

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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 120479

Enclosures: Submitted documents

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

²The city must release these documents to all subsequent requestors. See Gov't Code § 552.007.