



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 18, 1998

Mr. John Steiner
Division Chief
Law Department
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR98-3180

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121070.

The City of Austin (the "city") received an open records request from an attorney representing a former city employee for the employee's personnel file. You contend the requested information may be withheld from the public pursuant to section 552.103 of the Government Code. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); Open Records Decision No. 588 at 1 (1991). In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103. See Open Records Decision No. 452 (1986) ("litigation exception" properly invoked where attorney makes written demand for disputed payments and promises further legal action if not forthcoming).

This does not, however, end our discussion of whether the requested personnel records may be withheld. Absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). It is apparent to this office that the former city employee had prior access to most, if not all, of the records you have submitted to this office during the course of his employment with the city. To the extent that the former employee has had prior access to any of the information in these records, there would be no justification for now

withholding that information from the requestor pursuant to section 552.103.¹ Consequently, the city must release such information. Any other information, if it exists, may be withheld at this time pursuant to section 552.103.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RWP\nc

Ref: ID# 121070

Enclosures: Submitted documents

cc: Mr. Daniel Ross
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600 San Jacinto Center
98 San Jacinto Boulevard
Austin, Texas 78701
(w/o enclosures)

¹We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).