

January 6, 1999

Ms. Julie B. Ross
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Fort Worth, Texas 76102-3126

OR99-0012



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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# 121155 (your City Request Nos. 4475 and 4476).

The City of Coppell (the "city"), which you represent, received requests for the following information relating to Ms. Lisa Andrus: the internal investigation into alleged overtime fraud, her termination letter, and the report she filed on May 11, 1998, concerning a backdated parking receipt. You contend that these documents are excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.103(a) of the Government Code, 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 (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).

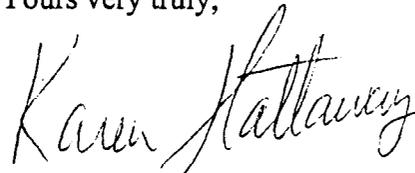
You explain that Ms. Andrus was terminated from her position as police officer with the Coppell Police Department following an internal affairs investigation. You submitted a copy of a petition to show that Ms. Andrus has filed a lawsuit against the city in federal court claiming that she was wrongfully terminated. *Andrus v. City of Coppell*, No. 3-98CV2614-G (N.D. Tex. filed Nov. 5,

1998). You have shown that litigation involving Ms. Andrus is pending. We have reviewed the requested documents and agree that they are related to the pending litigation.

However, information that has either been obtained from or provided to the opposing party in the litigation, through discovery or otherwise, is not excepted from disclosure under section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). The opposing party in the litigation, Ms. Andrus, has previously had access to the report she filed on May 11, her termination letter, and numerous documents in the internal affairs investigation file, including her time sheets, garrity warning, and memoranda concerning the investigation. The city may not withhold any of these documents from disclosure under section 552.103(a). The city may withhold the remaining documents in the internal affairs file from disclosure under section 552.103(a). We note that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ glg

Ref: ID# 121155

Enclosures: Submitted documents

cc: Mr. Michael Ryan
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(w/o enclosures)