



July 7, 1999

Mr. James C. Tidwell
Wolfe, Clark, Henderson & Tidwell, L.L.P.
123 N. Crockett Street, Suite 100
Sherman, Texas 75090

OR99-1894

Dear Mr. Tidwell:

You have asked whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 127132.

The City of Savoy (the "city") received a request for information concerning a personnel investigation pertaining to the requestor. You assert that the information at issue is excepted from disclosure under sections 552.101, 552.102, 552.103, and 552.111 of the Government Code. You submitted the requested records to this office to review.

The test to determine whether information is private and excepted from disclosure under common-law privacy provisions, which are encompassed in section 552.101 and section 552.102 of the Government Code, is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Texas Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.-Austin 1983, writ ref'd n.r.e.). The records at issue relate to the job performances of public employees. There is a legitimate public interest in how a public employee acts while on-duty and in how he or she performs job functions. Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees); 423 at 2 (1984) (scope of public employee privacy is narrow). The submitted information may not be withheld from disclosure under either section 552.101 or 552.102.

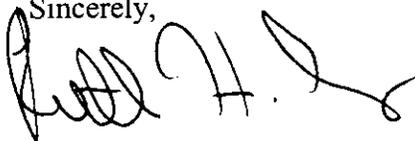
To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to

the litigation. *University of Texas 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 governmental entity must meet both prongs of this test for information to be excepted under section 552.103(a). However, you have not shown that litigation is reasonably anticipated in this situation.

Section 552.111 excepts interagency and intraagency communications from disclosure only to the extent that they contain advice, opinion, or recommendation for use in the governmental body's policymaking process. Open Records Decision No. 615 at 5 (1993). A governmental body's policymaking functions do not generally encompass personnel matters. *Id.* The records at issue are public and must be released.

We are resolving this matter with this 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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', written in a cursive style.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 127132

Encl: Submitted documents

cc: Ms. Rebecca L. Thomas
303 E. Edwards
Savoy, Texas 75479
(w/o enclosures)