



February 15, 2000

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

OR2000-0528

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# 132554.

The City of Austin (the “city”) received a request for “[c]opies of Employment Applications and all related application for employment ‘supplements’ on file for any and all persons hired as City of Austin Park Police Officer during the month of September 1999.” You have submitted a representative sample of the responsive information.¹ You assert that this information is excepted from public disclosure by sections 552.101, 552.103 and 552.117 of the Government Code.

We first note that the request encompasses information that is not subject to permissive exceptions in the Public Information Act and may not be withheld from disclosure unless it is expressly confidential under other law: The 76th Legislature amended section 552.022 of the Government Code. In pertinent part this section now reads

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

¹We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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- (2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body; of each employee and officer of a governmental body;

As the name, sex, ethnicity, salary, title, and dates of employment of the subject employees are not made confidential by law, the city must release this information.

With regard to the balance of the responsive information, section 552.103(a), the “litigation exception,” excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The governmental body 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. *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 litigation must be either pending, or reasonably anticipated at the time the request was received. Gov’t Code § 552.103(c).

The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986). This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated. Open Records Decisions Nos. 386 at 2 (1983), 336 at 1 (1982). You assert that the requestor has filed an employment discrimination complaint with the Equal Employment Opportunity Commission (“EEOC”). You have also supplied a copy of a “Charge of Discrimination,” date stamped as received September 9, 1999, by which the Texas Commission of Human Rights notified the city of such a complaint. The request for information is date stamped as filed on December 16, 1999. Therefore, you have shown that litigation was reasonably anticipated at the time the request for information was received. Gov’t Code § 552.103(c). To determine that the information relates to the anticipated or pending litigation, we follow the rule that “ordinarily, the words ‘related to’ mean ‘pertaining to,’ ‘associated with’ or ‘connected with.’” *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.). We have examined the submitted documents and conclude that they are related to this anticipated litigation.

However, absent special circumstances, where the opposing party to the anticipated litigation has had access to the records at issue, no section 552.103(a) interest exists with respect to

that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there is no justification for now withholding that information from the requestor pursuant to section 552.103(a). Also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

The requestor submitted comment to this office as permitted under Government Code section 552.304. He notes that the subject applicants are acknowledged by the city to be peace officers. He asserts, without reference to statute, that “under state law, anyone is entitled to a peace officer’s date of birth, educational records, employment records, military records, arrest/criminal records, and other similar data.” However, we are unaware of any statute which mandates release of this information in response to a request made to a governmental body under chapter 552 of the Government Code where the information is shown to be excepted from disclosure. *But see* Gov’t Code 552.022(a)(15)(governmental body must release information in compliance with its own policies).

In summary, the city must release the name, sex, ethnicity, salary, title, and dates of employment of all hired applicants. The city may withhold the balance of the responsive information under section 552.103 of the Government Code. As the above discussion disposes of this request, the other exceptions to disclosure raised by city are not addressed.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/nc

Ref: ID# 132554

Encl: Submitted documents

cc: Mr. Kevin McGaughy
P.O. Box 685292
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(w/o enclosures)