



February 24, 2000

Ms. Lisa Aguilar  
Assistant City Attorney  
City of Corpus Christi  
P O Box 9277  
Corpus Christi, Texas 78469-9277

OR2000-0683

Dear Ms Aguilar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132616.

The City of Corpus Christi (the "city") received a request for witness statements, police reports, memoranda, correspondence, and documents evidencing any disciplinary action related to a specific incident, as well as documents related to other complaints of the use of excessive force by the Corpus Christi Police Department in the last ten years. You claim that the requested information is made confidential pursuant to section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. You also claim an exception under section 552.103 of the Government Code. You have submitted representative samples of the information related to past complaints.<sup>1</sup>

We will first address your section 552.103 claim. Section 552.103(a) of the Government Code reads in pertinent part as follows:

(a) Information is excepted from [required public disclosure] if  
it is information relating to litigation of a civil or criminal nature to

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<sup>1</sup>In reaching our conclusion here, we 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.

which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). This office has held that a governmental body may show that litigation is reasonably anticipated when it receives a "letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party." Open Records Decision No. 638 at 3 (1996).

You have made the requisite showing that the requested information relates to anticipated litigation for purposes of section 552.103(a). The requested records therefore may be withheld from public disclosure under section 552.103(a).<sup>2</sup> However, basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 597 (1991), 362 (1983). We believe such basic information refers to the information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976). The city must release the basic information from the arrest report.

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<sup>2</sup>Because the internal affairs information you seek to withhold under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code is excepted from disclosure under section 552.103, we need not address your section 552.101 arguments at this time. We caution, however, that some of the information may be confidential by law. Therefore, if the city receives a request in the future, at a time when litigation is no longer reasonably anticipated or pending, the city should seek a ruling from this office on the other exceptions raised before releasing any of the requested information. See Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).

In addition, we note that if the opposing party in the litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). In particular, it is apparent that the requestor has had access to the letter to his client from the city. The city must release that letter. We further note that the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the city must release the basic information regarding the arrest and any information to which the potential opposing party has already had access. The city may withhold the remaining requested information.

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,

A handwritten signature in cursive script that reads "Patricia Michels Anderson". The signature is written in black ink and is positioned above the typed name.

Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/jc

Ref: ID# 132616

Encl. Submitted documents

cc: Mr. Pascual Madrigal  
Guerra & Madrigal  
519 South Presa  
San Antonio, Texas 78205  
(w/o enclosures)