



May 17, 2000

Ms. Sarajane Milligan
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2000-1965

Dear Ms. Milligan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135355.

The Harris County Sheriff's Department (the "department"), which you represent, received a request for "any publicly available information pertaining to" a named officer, including "the length of time employed; job performance evaluations; dates of commendations or promotions; dates of and reasons for disciplinary action; any complaints, the names of the complainants, and the final disposition of any complaints; and the officer's written response to any complaints." The requestor also seeks "copies of any radio transmissions made from or received by [the named officer] between the hours of 4:00 p.m. and 6:00 p.m. on February 10, 2000." You have provided for our review a representative sample of documents that are responsive to the request, marked as exhibits B and C. You have also submitted audio tapes of the requested radio transmissions, marked as exhibit D. You assert that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

In relevant part, section 552.103(a) reads as follows:

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

¹In 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.

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.

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).

As to the first prong, litigation must be pending or reasonably anticipated on the date that the information is requested. Gov't Code § 552.103(c). In this instance, exhibit E indicates that litigation was pending on the date that the request at issue was received by the department. As to the second prong, we believe that you have made the requisite showing that the requested information relates to litigation for purposes of section 552.103(a). Except as noted below, the requested records therefore may be withheld from public disclosure pursuant to section 552.103.

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 addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). However, if the records contain information that is confidential by law, you must not release such information even at the conclusion of the litigation. Gov't Code §§ 552.101, .352.

Section 552.022(a)(2) provides that, unless expressly confidential under other law, the "name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body" is public information and is not excepted from required disclosure under Chapter 552. *See* Gov't Code § 552.022. We have accordingly marked with red flags two pages of documents contained in exhibit B which contain information that is subject to required release under this provision. Moreover, we do not believe that the other information on these pages meets the second prong of the above-stated test pertaining to section 552.103(a). However, we note that section 552.117, in relevant part, provides:

Information is excepted from the [public disclosure] requirements of Section 552.021 if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

* * *

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code[.]

We believe this provision constitutes “other law” as contemplated in section 552.022. You must accordingly withhold the home address, home telephone number, and social security number of the named officer, as well as any information that reveals whether the officer has family members. We agree that the information you have marked in exhibit B must not be released pursuant to section 552.117. We have also marked certain additional information that likewise must not be released pursuant to this provision.

In light of our conclusion under sections 552.103 and 552.117, we need not address the applicability of other exceptions you have asserted, except to state that the information subject to release in exhibit B is not excepted from required disclosure by the other exceptions you have asserted.

In summary, you may withhold the information in its entirety pursuant to section 552.103, except the two red-flagged pages in exhibit B. You must release these pages, but you must first redact the marked information in these pages pursuant to section 552.117.

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).

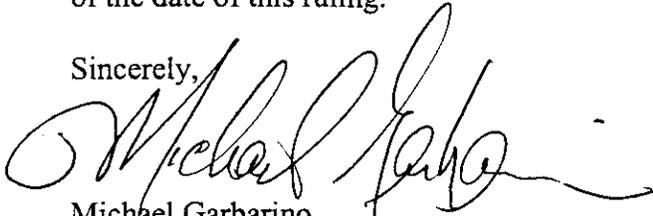
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Garbarino
Assistant Attorney General
Open Records Division

MG/ljp

Ref: ID# 135355

Encl. Submitted documents

cc: Mr. Kyle R. Sampson
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(w/o enclosures)