



July 28, 2000

Ms. Meredith Ladd
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2000-2863

Dear Ms. Ladd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137672.

The City of College Station (the "city") received a request from an attorney representing a named individual for the Internal Affairs Investigations and letters of temporary disciplinary suspension for two other named police officers. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 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).

To establish that litigation is reasonably anticipated, a governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” Open Records Decision No. 452 at 4 (1986). Contested cases conducted under the Administrative Procedure Act, chapter 2001 of the Government Code, are considered litigation under section 552.103 of the Government Code. Whether litigation is reasonably anticipated, must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

You state that the city’s Internal Affairs investigation of the named individual sustained the charges against that individual. You state that the investigator’s recommendations as well as the investigative file were sent to the chief of police. You state the chief of police made a determination of disciplinary action. You state and provided documentation that the named individual has appealed the disciplinary action. You contend that this appellate procedure is litigation for the purposes of section 552.103 of the Government Code. After reviewing the arguments submitted, we conclude that the procedures you describe do not constitute “litigation” for the purposes of section 552.103. Because you have not met your burden of demonstrating the applicability of this exception, the city may not withhold these documents pursuant to section 552.103 of the Government Code. Accordingly, the city must release these documents.

We find, however, that the submitted documents and audio tapes contain information that is excepted from public disclosure pursuant to section 552.117 of the Government Code. Section 552.117(2) requires the city to withhold information pertaining to a peace officer if the information relates to the home address, home telephone number, social security number, or reveals whether the peace officer has family members. We have marked the information in the documents that must be redacted prior to their release pursuant to section 552.117(2) of the Government Code. We also note that two of the audio tapes have been transcribed and the transcriptions are included in the submitted documents. We find that these two tapes contain information that falls within the purview of section 552.117(2) that must be redacted prior to these two tapes’ release. However, we find that redacting the section 552.117(2) information contained in the two tapes that represent the Administrative Review Board meeting would be impractical. Therefore, we conclude that the two tapes that represent the Administrative Review Board meeting must be withheld in their entirety.

Next, we note that the submitted documents contain a social security number of a person who is not a peace officer. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or “related record” may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number in the records here

is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure on the basis of that federal provision. We caution, however, that section 552.353 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, we note that the submitted documents also contain motor vehicle information that is confidential under section 552.130 of the Government Code. Section 552.130 excepts from required public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, under section 552.130, the city must withhold the Texas driver's license number that appears in the submitted documents. We have marked the documents containing this information.

In summary, the city must withhold the section 552.117(2) information that appears in the submitted documents. The city must redact the section 552.117(2) information from the transcription of the two submitted tapes. The city must withhold the two tapes that represent the Administrative Review Board meeting in their entirety. The city must redact the Texas driver's license number that appears in the documents under section 552.130. Finally, the city may have to withhold the social security number of the person who is not a peace officer in accordance with the above discussion. The city must release the remainder of the submitted 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).

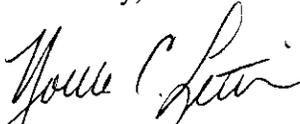
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/pr

Ref: ID# 137672

Encl. Marked documents

cc: Mr. Richard Aman
CLEAT Legal Services Trust
15603 Kuykendahl Road #390
Houston, Texas 77090
(w/o enclosures)