



August 7, 2000

Mr. Frank Melton  
Assistant City Attorney II  
City Of San Antonio  
9800 Airport Boulevard  
San Antonio Texas 78216-9990

OR2000-2990

Dear Mr. Melton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137815.

The City of San Antonio (the "city") received a request for information "generated between January 1998 and May 2000" and pertaining to "all the supervisors in the Parking Section of the Aviation Department." The requestor seeks the inspection of employee performance appraisals, the amount and percentage of each merit increase, and all records that were used for determining merit increases. You have submitted for our review information that is responsive to the request. You assert that this 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, in pertinent part, states:

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.

Gov't Code § 552.103(a). 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). In this instance, you have made the requisite showing that litigation was pending at the time the city received the request in the matter of *Ling Yin Liu v. City of San Antonio*, styled Cause No. 98-CI-02131, in the 255<sup>th</sup> District Court in Bexar County, San Antonio, Texas. Gov't Code § 552.103(c). The information you have provided also demonstrates that the requested information relates to that litigation for purposes of section 552.103. However, the applicability of section 552.103 ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). The requestor has submitted comments to this office in correspondence dated July 21, 2000. See Gov't Code § 552.304. The requestor explains that the above-referenced case has been dismissed and that litigation is no longer pending. Thus, the information may not be withheld under section 552.103. Except as may be applicable below, we therefore conclude that the city must release to the requestor the information that is responsive to the request.<sup>1</sup>

We note that the submitted documents contain the social security numbers of public employees, which we have marked. This information may be excepted from disclosure under section 552.101 or section 552.117 of the Government Code. Section 552.117(1) excepts from required public disclosure the home addresses, home telephone number, social security number, or personal family member information of public employees who request that this information be kept confidential under section 552.024 of the Government Code. See Gov't Code §§ 552.024, .117. You may not, however, withhold this information under section 552.117 if the named individual made the request for confidentiality under section 552.024 after the present request for information was received by the city. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). Thus, section 552.117 requires you to withhold the social security number information of only those employees who requested that this information be kept confidential under section 552.024 prior to the city's receipt of the present request. See also Open Records Decision Nos. 622 (1994), 455 (1987).

If the social security number information is not excepted under section 552.117, the information may nevertheless 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

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<sup>1</sup>The city has not advised this office that the litigation has concluded. See Open Records Decision No. 638 at 4 (1996) (governmental body that asserts section 552.103 to this office must provide this office information regarding any change of circumstances in the litigation during the time that our decision is pending). However, as indicated above, we base our conclusion that section 552.103 no longer applies on the representation made to this office by the requestor. If the litigation in fact has not concluded, we believe that the city may withhold the requested information, pursuant to section 552.103, until such time that the litigation concludes.

of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number information in the records here is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. *See* Gov't Code § 552.352. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, because we understand that the litigation to which the information relates has concluded, the information is no longer excepted from required public disclosure under section 552.103. Except for the social security number information we have marked which, as provided above, may be excepted under sections 552.101 and/or section 552.117, we thus conclude that you must release the information to the requestor.

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.

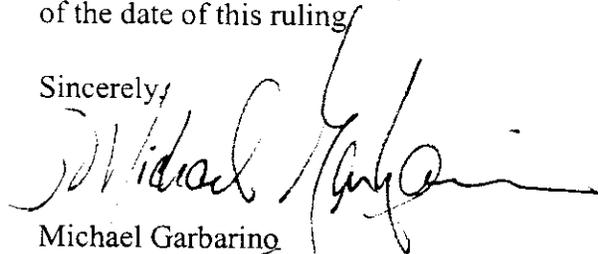
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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 black ink, appearing to read "Michael Garbarino". The signature is written in a cursive style and is positioned above the typed name and title.

Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/pr

Ref: ID# 137815

Encl. Submitted documents

cc: Mr. Cheepay Liu  
4946 Dare Lane  
San Antonio Texas 78217-1270  
(w/o enclosures)