



August 16, 2000

Ms. Karen Brophy  
Attorney at Law  
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel  
1717 Main Street  
Dallas, Texas 75201-4335

OR2000-3141

Dear Ms. Brophy:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code (the "Act"). Your requests were assigned ID#'s 138101 and 138102.

The City of Weatherford (the "city"), which you represent, received two requests for information relating to an investigation of or allegations against a municipal court judge, including the nature of the allegations, the nature of the investigation, the identity of the accuser, the reason for placing the judge on administrative leave, and personnel files relating to the allegations. This ruling will address both requests. The city has released to one requestor the reason for placing the judge on administrative leave, and you have released to the other "documents related to 'his placement on administrative leave.'" We will assume that the information the city released is the same as the information you released. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup>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). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

We first note that the city has referred one requestor to the Human Resources office to obtain the judge's personnel file information. We will not address that information except to observe that, if the personnel files requested are records of the municipal court, the Act does not govern access to them. *See* Gov't Code § 552.003(1)(B) (providing that under the Act, the term "governmental body" . . . does not include the judiciary"); *see also Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ); Attorney General Opinion DM-166 at 1 (1992) (stating that Act "neither authorizes information held by the judiciary to be withheld nor requires it to be disclosed"). However, such records may be subject to Rule 12 of the Rules of Judicial Administration. Also, certain judicial records may be open to the public under other sources of law. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992) (documents filed with a court generally are considered to be public); Attorney General Opinion DM-166 at 3 (1992) (public has general right to inspect and copy judicial records); Open Records Decision No. 25 at 3 (1974) (addressing public's right to inspect records of a justice of the peace).

Regarding the other requested information, we will first address your section 552.108 claim. Section 552.108(a) of the Government Code exempts from required public disclosure:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Because you have informed us that the records submitted as Exhibits 3, 4, and 5 pertain to a pending criminal investigation, we conclude that you have met your burden of establishing that the release of those records at this time could interfere with law enforcement or prosecution. You therefore may withhold Exhibits 3, 4, and 5 at this time pursuant to section 552.108(a)(1).

Section 552.108 does not, however, exempt from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). The

city must release these types of information in accordance with *Houston Chronicle Publishing Company 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). You raise section 552.101 in conjunction with the informer's privilege to provide an exception to required disclosure of information in Exhibits 2, 3, and 5. However, you inform us that there is no "accuser" or "complainant." Your firm was retained to conduct an investigation which prompted you to seek out and interview those with knowledge of possible criminal violations. We find that the witnesses interviewed are not informants for the purposes of claiming the informer's privilege. But neither are they complainants whose identities would be considered basic information. They are witnesses, and identifying them could interfere with the ongoing investigation. *See* Open Records Decision No. 127 at 9 (1976). Therefore, the city may withhold that information from Exhibits 3 and 5 under section 552.108.

You do not state a claim under section 552.108 regarding Exhibit 2; therefore, the city may not withhold Exhibit 2 under section 552.108. However, you do raise section 552.103 in relation to Exhibit 2. Section 552.103 excepts from required disclosure:

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 Exhibit 2 relates to anticipated litigation for purposes of section 552.103(a). The city may withhold Exhibit 2 under section 552.103.

Because we find sections 552.103 and 552.108 to be dispositive, we do not address your other claimed exceptions.<sup>2</sup> 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.

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<sup>2</sup> *See* Open Records Decision Nos. 597 (1991) (basic information in an offense report generally may not be withheld under section 552.103); 127 (1976).

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,



Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/pr

Ref: ID# 138101

Encl. Submitted documents

cc: Ms. Donna Morris  
Morris & Morris  
900 Parker Square, Suite 235  
Flower Mound, Texas 75028  
(w/o enclosures)

Mr. Joel Kertok  
Weatherford Democrat  
512 Palo Pinto Street  
Weatherford, Texas 76086  
(w/o enclosures)