



Icl # 10914
SG
GOV

RD-25

CITY OF HILLSBORO

115 S. Waco P.O. Box 568 Hillsboro, Tx. 76645 (817) 582-3271

October 22, 1990

CERTIFIED MAIL #P 581 180 588
RETURN RECEIPT REQUESTED

OCT 23 90

The Honorable Jim Mattox
Attorney General of Texas
Supreme Court Building
P. O. Box 12548
Austin, Texas 78711-2548

OPINION COMMITTEE

ATTENTION: Opinions Committee

RE: Request for Opinion Concerning
Availability Under Open Records
Act or Other Statutes of Inves-
tigation of Alleged Misconduct
of City Police Officers

Dear General Mattox:

In July, 1990, the City of Hillsboro employed Mr. Michael Yarborough of Yarborough & Associates, a private investigator, to conduct an independent investigation of any and all alleged incidents involving Sergeant Lee Boden, who was at that time a member of the City of Hillsboro police force, in which Sergeant Boden was alleged to have used excessive force against private citizens. Enclosed as Exhibit A is a copy of the letter to Mr. Yarborough regarding his employment in that capacity.

By letter dated August 24, 1990, Mr. Yarborough reported to me the results of his investigation concerning Sergeant Boden. A copy of that report is attached as Exhibit B.

By letter dated August 30, 1990, Mr. Yarborough forwarded to City Attorney Betty Ray Dohoney transcripts of certain oral interviews conducted by Mr. Yarborough in connection with his investigation. A copy of that cover letter is enclosed and marked Exhibit C. If you need copies of the transcripts, please advise and we will provide them.

In connection with Mr. Yarborough's investigation regarding Sergeant Boden, there came to Mr. Yarborough's attention information concerning alleged incidences of misconduct by other City of Hillsboro police officers. Mr. Yarborough forward a report concerning those matters to City Attorney Betty Ray Dohoney dated September 7, 1990. A copy of that report is enclosed and marked Exhibit D.

As you will see from Mr. Yarborough's letter dated August 30, 1990, additional material regarding his investigation has been promised but has not yet been received by the City.

City Attorney Betty Ray Dohoney is providing copies of these reports to The Honorable Dan Dent, District Attorney of the 66th Judicial District, and a copy of her letter to Mr. Dent is enclosed as Exhibit E.

I received on October 11, 1990, a letter dated October 8, 1990, requesting under the "Freedom of Information Act" a true and correct copy of all reports issued by Yarborough & Associates regarding persons or activities within the Hillsboro Police Department. A copy of that request is enclosed as Exhibit F.

By letter of today, I am responding to Mr. Beavers, acknowledging receipt of his request, advising that the "Freedom of Information Act" does not apply to state and local governments, and further advising that he may, of course, submit an amended or supplemental request. Enclosed is a copy of my letter to Mr. Beavers of this date marked Exhibit G.

The City of Hillsboro has received a notice of claim letter dated July 18, 1990, which we believe relates to incident No. 4 of Mr. Yarborough's report dated September 7, 1990. A copy of that notice letter is enclosed and marked Exhibit H.

In addition, incident No. 6, referred to in Mr. Yarborough's letter of September 7, 1990, is the subject of an ongoing internal investigation conducted by the City of Hillsboro.

Pursuant to Article 6252-17a, Section 7(a), I hereby request an opinion of your office regarding whether the information requested falls within one of the exceptions to the Open Records Act and whether this information may be withheld from Mr. Beavers or should be provided to him and, if so, under what conditions it should be provided and what parts of the information, if any, may be withheld.

The City of Hillsboro questions whether, and believes, the information requested, or at least portions of it, should be properly withheld from Mr. Beavers for the following reasons, among others:

(1) The reports from Mr. Yarborough were submitted to me and to my designee, City Attorney Betty Ray Dohoney, in connection with my function as chief personnel officer of the City of Hillsboro regarding personnel matters and anticipated personnel decisions and, even though the reports are not physically located in the personnel files of the officers involved, the information may well come within Article 6252-17a, Section 3(a)(2).

(2) The information relating to Sergeant Boden was the subject of settlement negotiations between Sergeant Boden and the City of Hillsboro concerning the termination of his employment with the City of Hillsboro, which resignation became effective September 4, 1990. Enclosed is a copy of Sergeant Boden's letter of resignation which is Exhibit I, and the Release obtained from him, which is Exhibit J. As a result, the information, or parts of it, may be subject to being withheld pursuant to Article 6252-17a, Section 3(a)(3).

(3) Since civil litigation has been threatened against the City of Hillsboro relating to at least one incident covered by these reports, the information requested may be subject to being withheld pursuant to Article 6252-17a, Section 3(a)(3).

(4) Since the reports requested involve letters to me, as chief personnel officer of the City of Hillsboro, or to my designee, City Attorney Betty Ray Dohoney, relating to the operation of the City of Hillsboro Police Department, they may be subject to being withheld pursuant to Article 6252-17a, Section 3(a)(8) as internal records of a law enforcement agency maintained at this point for internal use in matters relating to law enforcement or under Section 3(a)(11).

In addition, the request is made under the "Freedom of Information Act" and it would appear that 5 U.S.C.S. § 552 does not apply to state and local governments such as the City of Hillsboro, so that the request, as presently constituted, would appear not to be proper or made under applicable law.

In addition, the report of September 7, 1990, relating to the police officers other than Sergeant Lee Boden, relates to investigations which are not yet complete since Mr. Yarborough has not provided the additional information referred to in that report and this matter has not yet been presented to the City Council for determination regarding whether any further investigation or action will be taken by the City of Hillsboro. In addition, all of the reports requested relate to matters that have been submitted to Hill County District Attorney Dan Dent for his review and possible investigation and action and those matters are not yet complete. As a result, all, or parts, of the information may be subject to being withheld pursuant to Article 6252-17a, Section 6(1).

October 22, 1990

Either the undersigned, or counsel for the City of Hillsboro, will submit within 14 days from the date of this letter a supplemental letter detailing further written comments setting forth the reasons why the information requested should or may be withheld and a brief or memorandum of law in support of this letter and those additional comments.

Thank you very much for your attention to this matter. We look forward to receiving your opinion so we may correctly respond to this request for information.

Yours very truly,

By: 
Mack Woffard
City Manager
City of Hillsboro

MW:jp
Enclosures