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October 15, 1994

RQ-790

Dan Morales  
Attorney General  
State of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

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Opinion Committee

GOV

ML 29949-94

29949

Re: **OR94-631**

Dear General Morales:

I recently received a response to my request for a decision under the Texas Open Records Act. My original request was assigned ID# 28325.

I do not wish to reargue each and every point made in the response, but I must reurge some, because I do not believe the response is correct, nor do I believe your office quite understood the facts presented.

Your opinion recognizes that information may be withheld on common law privacy grounds if it is highly intimate or embarrassing and is of no legitimate concern to the public. Your letter states "We conclude that some of it is intimate or embarrassing, i.e., information concerning City police officers' on-duty sexual conduct. . . . We have marked the information that the City must withhold under Sections 552.101 and 552.102 of the Government Code." I am again enclosing the statements I believe your letter refers to with the request that the information you believe must be withheld be marked as stated in your letter. The tabs on this exhibit were placed on it by your office, not mine.

As further stated in your letter, the only information not submitted to your office which falls within the scope of this request is the executive session tapes. As your office correctly notes, we are not required to do so under the statute, nor is your office even authorized to review them.

You next reject our contention that the information relates to litigation of a civil nature to which the City is or may be a party or to which an officer or employee of the

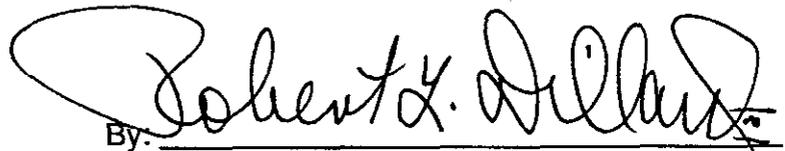
Dan Morales  
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City is or may be a party. Your letter states that I did not submit any documents or letters threatening litigation. I disagree. In fact, I submitted no fewer than four letters threatening litigation, two on behalf of Police Officer Leslie G. Willie and two on behalf of a former employee, Peggy Bland. As a matter of fact, there is an EEOC complaint pending by Peggy Bland against the City and the Chief of Police and that complaint was pending at the time of my original letter. In addition, since my original letter, Leslie G. Willie has in fact filed suit against the City, all members of the City Council, the Police Chief, the City Administrator, and me, as City Attorney. So, if it was not "pending or threatened" in your opinion before, it certainly is actual now and I certainly believe was "pending or threatened" at the time of my original letter. I am resending the letters as well as a copy of the Plaintiff's Original Complaint. It is still my contention that all the documents sent in the first letter can be withheld under the pending litigation exception stated in Section 552.103 of the Government Code.

In accordance with your letter, we will make all other items, except the executive session tapes, available for inspection and copying by Mr. Prestridge.

Very truly yours,

NICHOLS, JACKSON, DILLARD,  
HAGER & SMITH, L.L.P.

  
By: \_\_\_\_\_

Robert L. Dillard, III

RLD/ckh  
Enclosures

cc: Jim McConnell  
City Administrator

Rick Barnes  
Chief of Police

Mayor and City Council  
City of Forney

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