



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 29, 1994

Mr. Craig Anthony Arnold
Law Offices of Matthews & Branscomb
One Alamo Center
106 S. St. Mary's Street
San Antonio, Texas 78205-3692

OR94-513

Dear Mr. Arnold:

You have asked this office to determine if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 25346.

The City of Hondo (the "city") received an open records request for "all information, reports, evaluations and investigations made of, for, or by, the Hondo Police Department surrounding the circumstances leading to the arrest of Mr. Velasquez" on March 13, 1993. You submitted to this office as responsive to the request one document.¹ You assert that this document may be withheld from the public pursuant to section 552.103(a) of the Open Records Act.

To show that section 552.103(a) is applicable, the city must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have supplied information to this office that shows the city is being sued by other individuals

¹You also submitted a copy of the first page of the offense report, which you indicate has already been released to the requestor. Also submitted were copies of the petition in the lawsuit filed against the city and letters from a law firm, which we assume you submitted to show that litigation is pending.

We note further that the document you submitted refers to reports by various police officers. Since these documents were not submitted as responsive to the request, and since this office was informed that the submitted document was the only responsive document at issue, we assume any other responsive documents have already been released to the requestor. See Gov't Code §§ 552.301, .302 (failure to seek an attorney general decision within ten days of a request for information leads to the presumption the information is public).

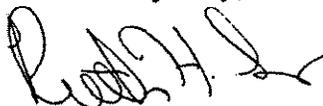
who allege that the Hondo Police Department has a policy of using excessive force. You assert that the information requested is "directly relevant to the plaintiff's attempt to prove some sort of practice or policy related to the use of force." You also contend that the information requested may be used to add additional plaintiffs to the lawsuit.

Although the city has shown that litigation is pending, and a review of the document indicates it is related to the litigation, the document at issue may contain public information. Generally, basic information in an offense report may not be withheld under section 552.103(a). Open Records Decision No. 597 (1991) (concluding that basic offense report information that has already been disclosed to the defendant in criminal litigation may not be withheld under section 552.103). Basic information includes details of the offense in question and names of the investigating officers. *Id.* at 2. In *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the court identified certain types of information which are public. Although this information is generally found on the first page of an offense report, its location is not determinative. It must be released regardless of where it is found. To determine what information must be released, the type of information must be examined rather than where it is located. *See* Open Records Decision No. 127 (1976) at 5. We have enclosed a summary of the types of information generally considered public. To the extent that this information has been released to the requestor's client in criminal litigation, it must now be released to the requestor.

You may withhold the information under section 552.103(a) that is not otherwise required to be disclosed. We note, though, that no section 552.103(a) interest generally exists once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise. Open Records Decision No. 349 (1982) at 2. The applicability of this exception also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We also note that since the section 552.103(a) exception to disclosure is discretionary with the governmental entity asserting the exception, it is within the city's discretion to release the information. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/MAR/rho

Ref.: ID# 25346

Enclosure: Submitted documents
Summary of information

cc: Mr. Pete Ramirez, III
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(w/o enclosures)