



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 14, 1995

Ms. Susan K. Lefler
Assistant City Attorney
City of Austin
Department of Law
P.O. Box 1088
Austin, Texas 78767-8828

OR95-759

Dear Ms. Lefler:

You have asked whether 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# 32550.

The City of Austin (the "city") received a request for information connected to an investigation being conducted by city auditors. You also state that this information has been turned over to the police department, and that this has resulted in an ongoing criminal investigation. Pursuant to sections 552.103 and 552.101, you seek to withhold notes that contain information provided by an informant and that identify the informant. You also assert that section 552.108 protects from disclosure a statement made as part of the ongoing investigation "which the City Auditor's Office and the Austin Police Department are not yet ready to release."

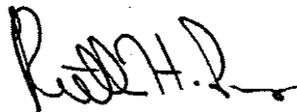
To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You assert that litigation is reasonably anticipated because a city employee involved in the investigation has been terminated from his position at the city, and has complained of that termination. However, you have provided no information that shows litigation is reasonably anticipated in regard to the employee's termination. See Open Records Decision No. 386 (1983) at 2 (employee complaint filed with Equal Employment Opportunity Commission shows reasonable anticipation of litigation).

However, you may withhold from disclosure the name of the informant under the informer's privilege aspect of section 552.101. This privilege excepts information from disclosure to the extent necessary to protect an informer's identity. *Rovario v. United States*, 353 U.S. 53 (1957); Open Records Decision Nos. 549 (1990) at 5, 202 (1978) at 2 (informer's privilege exception is not applicable when the identity of the informer is known to the subject of the communication). Thus, prior to releasing the notes, you may redact the name of the informant.

As to the statement, we agree that the city may withhold it from disclosure under section 552.108. When an incident involving allegedly criminal conduct is still under active investigation or prosecution, any proper custodian of information that relates to the incident may invoke section 552.108. Open Records Decision Nos. 474 (1987), 372 (1983). Because this is an ongoing investigation, the statement may be withheld from disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 32550

Enclosures: Submitted documents

cc: Mr. Michael R. Maguire
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(w/o enclosures)