



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 22, 1995

Mr. Robert L. Dillard, III
Nichols, Jackson, Dillard, Hager,
& Smith, L.L.P
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR95-819

Dear Mr. Dillard:

You ask 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# 34162.

The City of Forney (the "city") received a request for certain information. You inform us that the city will release some of the requested information, in particular, information relating to the investigation of the Forney police department by the Bureau of Alcohol, Tobacco and Firearms, a copy of the original contract between Parker-Jones, Inc. ("Parker-Jones"), and information concerning the cost of the police department investigation. The city seeks to withhold from required public disclosure based on sections 552.103 and 552.107(1) of the Government Code the following information: the final report prepared by Parker-Jones, the supporting documents to that report, information concerning the investigation of allegations against Lieutenant Alan Richman, information concerning the investigation of allegations against Sergeant Les Willie, memoranda from a city council member, and correspondence between the city and the Texas Municipal League concerning insurance coverage for various law suits filed against the city.

We will consider the exceptions you raise in regard to all of the information the city seeks to withhold except for the supporting documents compiled by Parker-Jones. We will address the release of these supporting documents in RQ-790.¹

Section 552.103(a) of the Government Code applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, 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; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991).

You advise us of one pending case to which the Parker-Jones report relates, *Leslie Glenn Willie v. City of Forney, et al*, No. 3:94-CV-1887-P (Northern Dist. Ct. of Texas, Dallas Division). You also inform us that a former city employee has filed a claim of sex discrimination with the Equal Employment Opportunity Commission ("EEOC") against the city and assert that the information about the investigation of allegations against Lieutenant Alan Richman relates to that claim.

We have reviewed a copy of Plaintiff's Original Complaint in the *Leslie Glen Willie* case. We believe the Parker-Jones report relates to the pending *Leslie Glen Willie* litigation. Thus, the city may withhold the report from required public disclosure based on section 552.103. The city may also withhold the correspondence between the city and the Texas Municipal League, and the memoranda from the city council member that you have marked as "category 5" pursuant to section 552.103 as information relating to pending litigation.²

¹You created another category of information which you describe as "category 3(B) Investigation of allegations against Sergeant Les Willie." Since you did not mark any information as within this category, we assume that the supporting documents to the Jones-Parker report contain all of the information relating to the investigation of allegations against Sergeant Willie. You state that the supporting documents you enclosed are representative samples of a voluminous number of such documents.

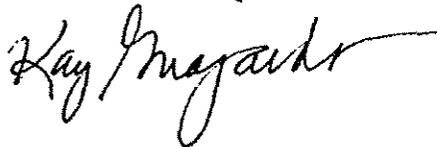
²Having determined that the city may withhold the correspondence between the city and the Texas Municipal League pursuant to section 552.103, we need not address whether this correspondence is excepted from required public disclosure pursuant to section 552.107(1) of the Government Code.

As for the information about the investigation into the allegations against Lieutenant Richman, this office has found that the pendency of a complaint before the EEOC indicates a substantial likelihood of litigation. See Open Records Decision No. 386 (1983). The information at issue relates to the pending EEOC complaint. We conclude that the city may withhold the information regarding the allegations against Lieutenant Richman based on section 552.103 of the Government Code.

We note that if the opposing parties in the pending or reasonably anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with this 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 may 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,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref: ID# 34162

Enclosures: Submitted documents

cc: Mr. Marvin W. Prestridge, III
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(w/o enclosures)