



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 14, 1995

Ms. Tracy R. Briggs
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-1421

Dear Ms. Briggs:

You have asked 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# 32145.

The City of Houston (the "city") received a request for records of Mobile Digital Transmissions ("MDT") for 42 officers for the month of March 1994. The request includes the suspended officer's own MDT records. You submitted to this office for review a representative sample of the requested MDT records and assert that the information is excepted from disclosure under section 552.103(a) of the Government Code.¹

To show the applicability of the section 552.103(a) exception, 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. In Open Records Decision No. 588 (1991) at 7, this office determined that a contested case under the statutory predecessor to the Administrative Procedure Act ("APA"), Government Code chapter 2001, is litigation for purposes

¹Both the officer and his attorney requested the records. The suspended officer's letter to this office states that the records were sought as "a discovery issue" in connection with action taken against him. Please note that this decision does not address or effect the scope of discovery in connection with a civil service hearing.

of section 552.103(a).² This office has also stated that "the litigation exception may be applied to records relating to a contested case before an administrative agency." Open Records Decision No. 301 (1982) at 2.

You indicate that a police officer was indefinitely suspended from his position with the city's police department. Your letter of March 3, 1995, states that "[t]he indefinite suspension hearing is at the hearing stage." We assume from your letter that as of March 3, 1995, the officer had appealed his suspension to the city's civil service commission, and there was a hearing on that appeal. There is no indication that a lawsuit was filed after the civil service commission hearing.

You also submitted an affidavit from the attorney who represents the city in regard to the suspension. That affidavit states that the requested information is related to the officer's suspension. However, you supplied no information indicating why the officer was suspended. It is not apparent from our review of the submitted documents nor have you explained how all of the MDT records for 42 officers for a month are related to the officer's suspension and hearing.³ See Open Records Decision No. 551 (1990) at 5 (section 552.103(a) is applicable when governmental body "has reasonably established relatedness of subject matter of requested information to litigation").

Since the city has not met its burden of showing the applicability of section 552.103(a) to the requested records, they must be released. 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 Records Division

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²The statutory predecessor to the APA was the Administrative Procedure and Texas Register Act ("APTRA"), V.T.C.S. art. 6252-13a.

³We assume from the information supplied this office that all of the transmissions requested are at issue. You state that transmissions for two officers are in printout form and that there are an additional forty hours of MDT on tape. The affidavit you submitted indicates the city wishes to withhold all of the named 42 officers' transmissions for March 1994.

Ref.: ID# 32145

Enclosures: Submitted documents

cc: Mr. W. Stacey Mooring
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