



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1995

Mr. Michael R. Caldwell
City of Muleshoe Attorney
113 West Avenue D.
Muleshoe, Texas 79347

OR95-1613

Dear Mr. Caldwell:

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# 33866.

The City of Muleshoe (the "city") received a request for "[t]he incident report involving the domestic dispute at police chief Julian Dominguez's house on Avenue B in Muleshoe." You submitted to this office a number of documents, including a one page incident report and a statement from an individual concerning the incident.¹ You contend that this information is excepted from disclosure pursuant to section 552.103(a).

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the 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. The governmental entity must meet both prongs of this test for information to be excepted under section 552.103(a). You state that a city police officer whose employment was terminated has complained that "he did not feel that he was being discharged for the reasons disclosed to him." This officer also met in executive session with the city council to discuss the termination of his employment, and stated that he was keeping his options open. Although you indicate the officer was terminated for other reasons, you state that it is your belief the police officer may allege that he was fired in retaliation for responding to the domestic dispute call.

¹You also submitted to this office letters, memoranda, and notes concerning the police officer whose employment was terminated. These documents, which do not appear to be responsive to the request, are not addressed by this letter.

In Open Records Decision No. 452 (1986) at 4, this office stated:

Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it -- unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. [Citations omitted.]

Litigation has been found to be reasonably anticipated when an individual has hired an attorney who demands damages and threatens to sue the governmental entity. Open Records Decision No. 551 (1990) at 2. This office has found that litigation was not reasonably anticipated when an applicant who was rejected for employment hired an attorney, and the attorney as part of his investigation asked for information as to why his client was rejected. Open Records Decision No. 361 (1983). In this situation the prospect of litigation is too speculative for section 552.103(a) to be applicable. Open Records Decision No. 518 (1989) at 5 (governmental body must show that litigation involving a specific matter is realistically contemplated).

Our review of the requested information shows that it contains an address that is confidential under section 552.117. Section 552.117(1) of the Government Code excepts from public disclosure information relating to

(1) the home address or home telephone number of:

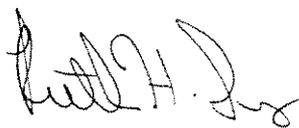
(A) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024; or

(B) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code

We also note that the individual who made the statement requested that her statement not be released, apparently due to some concerns about privacy. Section 552.101 excepts from required public disclosure information made confidential by a constitutional or common-law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d. 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy excepts from disclosure information that contains highly intimate or embarrassing facts, the disclosure of which would be objectionable to a reasonable person, provided that such information is of no legitimate concern to the public. However, generally documents relating to the police investigation of allegations of family violence are not excepted from disclosure on the basis of common-law privacy. Open Records Decision No. 611 (1992) at 1-2. *See also* Open Records Decision No. 579 (1990) at 7 ("even private, highly offensive information may be disseminated if there is a legitimate public interest in knowing it").

Except for information made confidential under section 552.117(1), the incident report and statement 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 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

RHS/rho

Ref.: ID# 33866

Enclosures: Submitted documents

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