



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 7, 1996

Mr. John Steiner
Division Chief
City of Austin
Department of Law
P.O. Box 1088
Austin, Texas 78767-1088

OR96-0907

Dear Mr. Steiner:

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# 39727.

The City of Austin (the "city") received an open records request for its records reflecting whether a named police officer "has been disciplined, suspended from duty or placed on probation, or in any way reprimanded, demoted or any other action by the Austin Police Department."¹ You contend that the requested information is excepted from required public disclosure under section 552.103 of the Government Code.

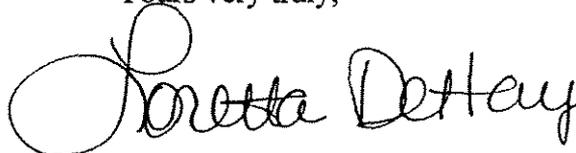
To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation *to which the governmental body is a party*. Open Records Decision No. 588 (1991) at 1. You contend that the records at issue "relate" to litigation of a criminal nature. Consequently, the city is not a party to the pending litigation.

¹Although the request letter actually makes reference to two police officers, it appears that the reference to the second officer may have been inadvertent. We assume the city has clarified this matter with the requestor.

However, in order to protect the litigation interests of the prosecuting attorney, and consistent with a previously established practice of this office, we asked you in a letter dated May 6, 1996, to submit to this office a letter from the prosecutor stating that the requested records "relate" to the pending prosecution and that neither the criminal defendant nor his attorney has had prior access to the information. We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e) of the Government Code, failure to comply would result in the legal presumption that the requested information is public information. Because we have received no such letter from the prosecuting attorney, we assume that the prosecutor has no litigation interest in having these records withheld from the public. We therefore conclude that the city must release the requested records in their entirety.²

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,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/RWP/rho

Ref.: ID# 39727

Enclosures: Submitted documents

cc: Mr. John S. Butler
2414 Exposition Blvd., Suite D-210
Austin, Texas 78703
(w/o enclosures)

²Although you assert various grounds for withholding certain types of confidential information pursuant to section 552.101 of the Government Code, we did not identify any of those categories of information within the documents at issue.