



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 13, 1997

Mr. Edward H. Perry
Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR97-1389

Dear Mr. Perry:

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# 106588.

The City of Dallas (the "city") received a request for certain information relating to the suspension from employment of a city employee, including witness names and remarks. You assert that the information is excepted from disclosure pursuant to sections 552.101 and 552.103 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing 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. The city must meet both prongs of this test for information to be excepted under section 552.103(a).

A review of the information submitted indicates that the requestor received an initial hearing concerning her suspension and that she is appealing the decision reached in that hearing. You have characterized the requested appeal as a request for an administrative hearing, which you assert is, in essence, litigation for purposes of section 552.103. You further state that such a hearing is the first step in the process of litigation in a court of law, and that "[d]epending on the

nature of the disciplinary action taken, an employee may have the right to appeal the disciplinary action through the judicial system.”

We conclude you have not demonstrated how the administrative hearing process in this case is litigation for purposes of section 552.103(a). Further, we note that litigation cannot be regarded as “reasonably anticipated” unless there is concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982). We also conclude that you have not met your burden in establishing that litigation is reasonably anticipated in this case, and thus, the requested information may not be withheld under section 552.103(a).

The informer’s privilege, incorporated into the Open Records Act by section 552.101¹, protects the identity of persons who report violations of the law to officials having the duty of enforcing particular laws. *See Roviato v. United States*, 353 U.S. 53, 59 (1957). The informer’s privilege does not, however, apply to information that does not describe alleged illegal conduct. Open Records Decision No. 515 (1989) at 5. For example, the informer’s privilege aspect of section 552.101 does not protect memoranda and written statements complaining of a fellow employee’s work performance when those statements do not reveal the suspected violation of specific laws to the officials charged with enforcing those laws. *See* Open Records Decision Nos. 579 (1990) at 8, 515 (1989) at 3. As the information contained in Exhibit B does not allege the violation of any laws, we conclude it may not be withheld under the informer’s privilege in conjunction with section 552.101.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 106588

¹Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”

Enclosures: Submitted documents

cc: Ms. Diane Trevino
1500 Marilla
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(w/o enclosures)

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