



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 16, 1997

Mr. Norbert J. Hart
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR97-1622

Dear Mr. Hart:

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# 107111.

The City of Corpus Christi (the "city") received a request for "police reports pertaining to the shooting of Edward Seth Rogers, and actions Rogers took prior to his shooting," as well as "the disciplinary and commendation records of Charles Williams, Mike Delgado and Edward Solis." You state that the city has released certain information to the requestor, but assert that the remainder of the requested information is excepted from disclosure pursuant to section 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 governing body 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).

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). This office has concluded that litigation is reasonably anticipated when an attorney makes a written demand for disputed payments and promises further legal action if they are not forthcoming, and when a requestor hires an attorney who threatens to sue a governmental entity. Open Records Decision Nos. 555 (1990), 551 (1990). However, the fact that an individual has hired an attorney or that a request for information was made by an attorney does not, without more, demonstrate that litigation is reasonably anticipated. Open Records Decision No. 361 (1983) at 2. Furthermore, when a requestor publicly states on more than one occasion an intent to sue, that fact alone does not trigger section 552.103(a). Open Records Decision No. 452 (1986). Upon review of the information provided, we conclude the city has not met its 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).

We note, however, that the records relating to commendations and reprimands of the specified officers may be confidential under section 552.101 of the Government Code in connection with section 143.089(g) of the Local Government Code. For those municipalities that have adopted the civil service provisions of chapter 143 of the Local Government Code, section 143.089 contemplates two different types of personnel files for police officers and fire fighters: one that a police or fire department is required to maintain as part of a civil service file, and one that the department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court determined that section 143.089(g) made confidential the records maintained in a police department's internal personnel file relating to complaints against a police officer in which the police department took no disciplinary action. *City of San Antonio*, 851 S.W.2d at 949. A request for information contained within the internal file must be referred to the civil service director or his designee. Local Gov't Code § 143.089(g); see *City of San Antonio*, 851 S.W.2d at 949. Thus, if any of the requested documents are properly held only within the department's internal file, the request for this information must be referred to the civil service director or his designee.

In cases in which a fire or police department takes disciplinary action against a fire fighter or police officer, section 143.089(a)(2) requires the department to place records relating to the investigation and disciplinary action in the personnel files maintained under section 143.089(a). Such records are not confidential pursuant to section 143.089(g) and must be released as required by law. Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6; *City of San Antonio*, 851 S.W.2d at 948. Information in 143.089(a) files may only be withheld if another provision of chapter 552 of the Government Code excepts this information from disclosure. You raise no other exceptions to disclosure. Therefore, assuming the records submitted relating to disciplinary action against an officer are maintained in a civil service personnel file under section 143.089(a), this information must be released to the requestor.

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# 107111

Enclosures: Marked documents

cc: Ms. Mary Lee Grant
Staff Writer
Corpus Christi Caller Times
820 Lower North Broadway
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(w/o enclosures)

