



Office of the Attorney General

State of Texas

August 11, 1997

DAN MORALES  
ATTORNEY GENERAL

Mr. Dan T. Saluri  
Assistant City Attorney  
Lubbock City Attorney's Office  
P.O. Box 2000  
Lubbock, Texas 79457

OR97-1789

Dear Mr. Saluri:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 107926.

The City of Lubbock (the "city") received a request for "the name, position, sex, salary and dates of employment of all employees in the Lubbock Police Records Department in the years 1995 and 1996. Copies of all records in the employment file of Deanne Bostick-Martin from date of hire to present." You assert that the requested information is excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered your argument and reviewed the documents 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).

You have submitted a petition to this office filed against the city in state district court in Lubbock alleging that the city has violated the Open Records Act. The petitioner seeks ongoing public access to certain information sought by the requestor as well as attorney's fees and other equitable relief. You state that the requested

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<sup>1</sup>We note in your initial brief to this office, you stated that the requestor seeks "...copies of any and all internal records department policy and or procedure documents that pertain to the city of Lubbock Police Records Department, that were in effect, considered or evaluated in 1995 and 1996."

information is "relevant to the central issue of the litigation which relates to L.P.D. policy and procedures relating to the Records Department. The allegations of the petition cover time periods in 1995 and 1996. The employees whose records are sought are potential witnesses in the litigation. Deane Martin is a party defendant." Upon review of the submitted information, we conclude you have met your burden in demonstrating how the requested information relates to the pending litigation and thus, the requested information may be withheld under section 552.103(a).

We note, however, that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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# 107926

Enclosures: Submitted documents

cc: Mr. Carl M. Weeks  
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(w/o enclosures)