



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 30, 1997

Ms. Regina Atwell
City Attorney
City of Cleburne
P.O. Box 657
Cleburne, Texas 76033-0657

OR97-2416

Dear Ms. Atwell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 109858.

The City of Cleburne (the "city") has received four requests for information from the same requestor concerning a May 18, 1997 incident involving the requestor. You state that you will release some of the requested information, including the city's training manuals concerning the use of baton and pepper spray, and the first page of the police report.¹ You claim, however, that the remaining information is excepted from required public disclosure by sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

¹You also state that you have calculated the costs for this information. We note, however, that costs for paper copies of less than fifty pages generally may only include photocopying costs. Gov't Code § 552.261. If you have any concerns over the costs associated with providing the requestor with the requested information, we suggest that you contact the Open Records Administrator for the General Services Commission. See Gov't Code § 552.262.

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

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 552.103(a).

In this instance, the requested information concerns a police arrest that took place on May 18, 1997. The arrested person has alleged damages associated with the incident and has hired an attorney. The attorney has provided the city with a notice of claim of damages arising from the incident and has threatened to sue.² We believe that the city has shown that litigation is reasonably anticipated. We also find that the requested information is related to the anticipated litigation. The city may withhold the requested information under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, 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). Because we make a determination under section 552.103, we need not consider your additional argument under section 552.108 at this time. We note, however, that some of the requested information may be confidential by law and must not be released even after litigation has concluded. See Gov't Code § 552.101. If you receive a subsequent request for the information, you should re-assert your arguments against disclosure at that time. Gov't Code § 552.352 (distribution of confidential information is criminal offense).

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

²We also note that under Open Records Decision No. 638 (1996), a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney and (2) stating that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA") or applicable municipal statute or ordinance.

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 109858

Enclosures: Submitted documents

cc: Mr. Edwin Dozier
1003 Hyde Park Boulevard
Cleburne, Texas 76031
(w/o enclosures)