



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 16, 1997

Ms. Regina Atwell
City Attorney
City of Cleburne
P.O. Box 677
Cleburne, Texas 76033-0677

OR97-2753

Dear Ms. Atwell:

You ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 111398.

The City of Cleburne (the "city") received three requests for information relating to arrest of Mr. Edwin Dozier and the police officers who arrested him. You contend that the requested information is excepted from disclosure under sections 552.103, 552.117, and 552.122 of the Government Code. We have considered the exceptions you claim and have reviewed the information at issue.

In addition to the specific exceptions you claim, you also object to responding to certain items of the requests because you state that to do so would require you to answer factual questions and conduct research. Although the act does not require a governmental body to answer factual questions, conduct legal research, or create new information in response to a request, a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision Nos. 563 (1990), 561 (1990), 555 (1990), 534 (1989). In other words, if the city is able to identify documents in its possession from which the requestor could ascertain the answers that he is seeking, the city must provide the requestor with those documents. We note also that when a governmental body is presented with a broad request for information rather than for specific records, it should advise the requestor of the types of information available so that he may narrow or clarify his request. Open Records Decision Nos. 563 (1990), 561 (1990).

Section 552.103(a) of the Government Code excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in

a particular situation. In order to meet this burden, the governmental body must show 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. You have demonstrated that the city reasonably anticipates litigation regarding Mr. Dozier's arrest and that the submitted information relates to the anticipated litigation.

We note, however, that section 552.103(a) generally may not be invoked to except front page offense report information from disclosure. See Open Records Decision No. 597 (1991). Thus, we conclude that the city must release the submitted information that constitutes front page offense report information.¹ The city may withhold the remaining information from disclosure under section 552.103(a).²

Finally, we address your questions about section 143.089(f) of the Local Government Code. Section 143.089(f) of the Local Government Code provides as follows:

The [civil service] director or the director's designee may not release any information contained in a fire fighter's or police officer's personnel file without first obtaining the person's written permission, unless the release of the information is required by law.

In Open Records Decision No. 562 (1990), we concluded that section 143.089(f) does not make information contained in personnel files maintained by civil service departments confidential for purposes of the act. *Id.* at 11. In other words, documents contained in files maintained under section 143.089(f) must be released unless they fall within one of the act's exceptions to disclosure. The submitted information includes some documents from the civil service files of police officers. However, the city may withhold these documents from disclosure under section 552.103(a) for the reasons discussed above.

We are resolving this matter with an informal letter ruling rather than with a published open records decision.³ This ruling is limited to the particular records at issue under the facts presented

¹Information normally found on the front page of an offense report is generally considered public. See generally Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report.

²We note that once all parties to the litigation have gained access to the information at issue, through discovery or otherwise, section 552.103(a) is no longer applicable. Open Records Decisions Nos. 551 (1990), 454 (1986). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Open Records Decision No. 350 (1982).

³Because we are able to resolve this matter under section 552.103(a), we need not address your claims under sections 552.117 and 552.122 at this time.

to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 111398

Enclosures: Submitted documents

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



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 16, 1997

Mr. Hugh W. Davis, Jr.
Assistant City Attorney
The City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102-6311

OR97-2754

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111452.

The City of Fort Worth (the "city") received a request for "a copy of a recent communication in which Fort Worth Police Chief Thomas Windham wrote City Manager Bob Terrell and requested that the city pay legal fees for attorney Bill Lane." You contend that this memorandum is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the memorandum at issue.

Section 552.103(a) of the Government Code excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show 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. You have not alleged that the memorandum is related to reasonably anticipated or pending litigation. Thus, we conclude that the city may not withhold the memorandum from disclosure pursuant to section 552.103(a).

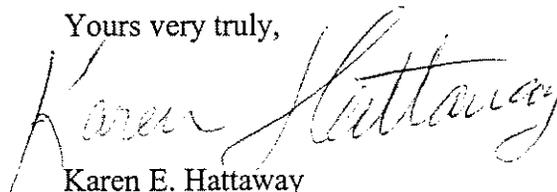
Section 552.107(1) of the Government Code protects information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only "privileged information," that is, factual information or requests for legal advice communicated by the client to the attorney and legal advice or opinion rendered by the attorney to the client. Open Records Decision No. 574 (1990) at 5-7. Section 552.107(1) does not, however, protect purely factual information. *Id.* Section 552.107(1) does not except from disclosure the factual recounting of events or the documentation of calls made, meetings attended, or memos sent. *Id.* at 5. Having reviewed the memorandum, we

find that it does not reveal any client confidences or any confidential legal advice or opinion. Therefore, the memorandum is not excepted from disclosure by section 552.107(1).

Finally, you claim that the memorandum is excepted from disclosure under section 552.111 of the Government Code as an interoffice communication relating to a policymaking matter. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. You state that reimbursing a city employee for legal fees "would require approval by the City Council and constitutes a matter of policy." We conclude, however, that the reimbursement is an internal administrative matter that does not rise to the level of a policymaking issue. The memorandum is not excepted from disclosure under section 552.111 and must, therefore, be released.

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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 111452

Enclosures: Submitted documents

cc: Mr. Jack Z. Smith
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(w/o enclosures)