



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 19, 1998

Mr. Patrick S. Dohoney
Haynes and Boone, L.L.P.
201 Main Street, Suite 2200
Fort Worth, Texas 76102-3126

OR98-0765

Dear Mr. Dohoney:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID#114162.

The City of Waxahachie (the "city") received a request for the following seven items of information:

1. Waxahachie Local Civil Service Rules of the City of Waxahachie Firefighters and Police Officers Civil Service Commission;
2. Waxahachie Police Department Written Directives/General Orders;
3. City of Waxahachie Personnel Policies;
4. City of Waxahachie Civil Service Commission Director's personnel file on Felix W. Pruitt maintained pursuant to Local Government Code section 143.089;
5. City of Waxahachie Police Department's personnel file on Felix W. Pruitt maintained pursuant to Local Government Code section 143.089(g);
6. The cassette tape record of the City of Waxahachie Civil Service Commission's April 5, 1995 hearing on the appeal of Felix W. Pruitt;

7. The minutes of the City of Waxahachie Civil Service Commission's April 5, 1995 hearing on the appeal of Felix W. Pruitt.

You have submitted to this office representative samples of the requested information.¹ You assert that the information requested is excepted from required public disclosure based on section 552.103 of the Government Code.

You have labeled a portion of the information as "Representative copies of The City of Waxahachie Civil Service Commission Director's personnel file on Felix W. Pruitt maintained pursuant to Local Government Code section 143.089(g)." Section 143.089(g) of the Local Government Code allows for the maintenance of a separate departmental file in addition to the civil service file provided for in section 143.089(a)(2) of the Local Government Code. This separate file is for the department's own internal use and is deemed confidential by law. Gov't Code § 143.089(g); *see City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--1993, writ denied). Section 143.089(g) requires the department to refer a requestor to the civil service director. We will assume that the city complied with this procedural requirement and that the submitted personnel file is the civil service file.

Section 143.089(e) of the Local Government Code states that a police officer "is entitled, on request, to a copy of any letter, memorandum, or document placed in the person's personnel file." This mandatory access provision prevails over the section 552.103 exception to disclosure. *See Open Records Decision No. 598 (1991)* at 3-4. Thus, the city may not withhold from the requestor his civil service personnel file.

Before we turn to your section 552.103 claim, we must first consider three categories of information, the Waxahachie Civil Service Local Rules, the requested minutes of a public meeting and the Waxahachie Police Department Written Directive Manual. The first two categories of information are deemed public by statute. Generally, Open Records Act exceptions, including section 552.103, do not apply to information made public by statute. *See Open Records Decision Nos. 613 (1993), 525 (1989)*.

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988)* (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 143.011(c) of the Local Government Code reads as follows:

Each [civil service commission] rule, opinion, directive, decision, or order issued by the commission must be written and constitutes a public record that the commission shall retain on file.

Thus, the Waxahachie Civil Service Local Rules may not be withheld from disclosure based on section 552.103. *See id.*

Section 551.022 of the Government Code reads as follows:

The minutes and tape recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee.

Thus, the city may not withhold the requested minutes based on section 552.103.² *See* Open Records Decision No. 221 (1979).

As for the third category of information, we observe that the police chief indicates in his cover letter to the Waxahachie Police Department Written Directive Manual that copies of the manual are available in the city library system and city hall. Also, the chief states that "[t]he information may be obtained by any interested citizen." "Public information made available . . . must be made available to any person. Gov't Code § 552.021(b). Thus, the city may not withhold the Waxahachie Police department Written Directive Manual from the requestor based on section 552.103.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is 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

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

²As you did not submit the requested tape recording, we assume it does not exist. *See* Gov't Code § 551.021 (requiring government body to keep minutes *or* make tape of each open meeting).

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). Thus, the test for establishing that section 552.103 applies is a two-prong 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

You assert that section 552.103 applies to the requested information because the information relates to the pending case of *Pruitt v. City of Waxahachie*, No. 54128 (40th Dist. Ct., Ellis County, Tex., filed Mar. 8, 1996), which you state is a wrongful discharge action and appeal from a hearing examiner ruling. In his pleading, the plaintiff in *Pruitt* appeals "a hearing examiner's award under Local Government Code section 143.057(j) on the grounds that the arbitration panel exceeded its jurisdiction in allowing polygraph examinations to aid in its decision of findings and conclusions." The city has established that litigation is pending. We must address next the relatedness of the information to the pending litigation, but we only need do so in regard to the City of Waxahachie Personnel Policies Manual as we have otherwise disposed of the question of the release of the other information requested. We conclude that the city has not established how this manual relates to the pending litigation. Accordingly, the city may not withhold the manual from the requestor based on section 552.103.

We are resolving this matter with this 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 may 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 114162

Enclosures: Submitted documents

cc: Mr. James W. Wilson
Chafin & Wilson, L.L.P.
3303 Lee Parkway, Suite 500
Dallas, Texas 75219
(w/o enclosures)