



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 29, 1998

Mr. John Steiner  
Division Chief  
City of Austin  
Law Department  
P.O. Box 1546  
Austin, Texas 78767-1546

OR98-1352

Dear Mr. Steiner:

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# 116290.

The City of Austin (the "city") received a request for information concerning the disciplinary actions taken against six named police officers. You have released the requested information as to five of the officers. You assert that the requested information pertaining to Officer Andrew Perkel is excepted from required public disclosure by section 552.103 of the Government Code. You submit the information the city seeks to withhold from public disclosure.

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.

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). A governmental body has the

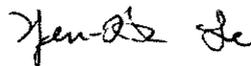
burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to 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 argue that the requested information is related to a pending case, *Thomas Jason Harmony v. City of Austin*, Cause No. 235,440, Travis County District Court. We conclude that you have shown that litigation is pending and that the requested information relates to pending litigation. Therefore, you 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).

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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

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Ref.: ID# 116290

Enclosures: Submitted documents

cc: Ms. Annie Campos  
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(w/o enclosures)