



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 24, 1998

Mr. Alex Lopez
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR98-1528

Dear Mr. Lopez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 116651.

The City of Corpus Christi (the "city") received an open records request for "the Contemplated Disciplinary Action letter, a copy of the disciplinary action taken against [a named city employee], and all documents about this incident." You contend the requested information is excepted from required public disclosure pursuant to sections 552.103 and 552.107(1) of the Government Code.

To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. You contend that section 552.103 applies in this instance because the requested information

is related to [the requestor's] ongoing disciplinary proceedings. It is the City's opinion that Mr. Palacios is trying to circumvent the discovery procedures of the Civil Service Board of Appeals in an attempt to secure information that would otherwise not be accessible to an employee who appeals his disciplinary action to the board.

When an employee appeals his Civil Service disciplinary action the proceedings take on the formality of a contested case. The individual is entitled to notice and a hearing as well as the right to counsel and to put on evidence. The Quasi-judicial body's decision can be appealed only to the City Council.

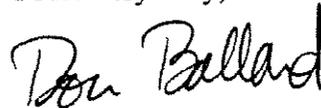
The information you have provided to this office regarding the procedures used in appealing disciplinary actions does not explain how this process constitutes "litigation" for purposes of section 552.103(a). *See* Open Records Decision No. 588 (1991) at 4. Accordingly, the city may not withhold the requested documents under section 552.103.

You contend that the handwritten portions of two draft documents come within the attorney-client privilege, and as such are excepted from required public disclosure pursuant to section 552.107(1) of the Government Code. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* You explain that the handwritten notations on the documents were created by an assistant city attorney. After reviewing the notations, we agree that this information constitutes an attorney's legal advice that may be withheld from the public pursuant to section 552.107(1). Because you have raised none of the Open Records Act's other exceptions for the remaining information in these documents, however, the city must release the original drafts of these documents, as well as all of the other requested records, in their entirety, with the following exception.

Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 (1982) at 1, we will raise section 552.117 of the Government Code because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Government Code § 552.352. We note that the documents at issue contain the social security number of the referenced city employee. If the city employee has previously elected to make his social security number confidential in accordance with section 552.024 of the Government Code, the city must withhold this information pursuant to section 552.117(1). *But see* Open Records Decision No. 530 (1989) (character of requested information as public under statutory predecessors to sections 552.024 and 552.117 is determined as of time request for information is made.)

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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/RWP/nc

Ref.: ID# 116651

Enclosures: Submitted documents

CC: Aldaberto Palacios
4137 Cierra Circle
Corpus Christi, Texas 78410
(w/o enclosures)