



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 25, 1998

Ms. Julie B. Ross  
Haynes & Boone, L.L.P.  
201 Main Street, Suite 2200  
Fort Worth, Texas 76102-3126

OR98-2025

Dear Ms. Ross:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118242.

The City of Coppell has received a request from Arthur H. Kwast for "all documents the City released (and should have released) to Jason P. Shanks pursuant to OR98-1084 including, but not limited to all documents that Shanks 'has seen or had access to' and 'the information (Shanks) apparently submitted to the city.'" Open Records Letter No. 98-1084 (1998) ruled on requests from Mr. Shanks to the city. It determined that the city had demonstrated that the requested documents generally related to reasonably anticipated litigation with Mr. Shanks and could thus be withheld under the "litigation exception," Government Code section 552.103(a). However, the ruling added, in a footnote:

If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). *In particular, section 552.103 does not cover the information the potential opposing party apparently submitted to the city nor does section 552.101 cover such information in this instance. In addition, the applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).*  
[Emphasis added]

The focus of your inquiry here is whether the effect of the emphasized language in the above-quoted footnote from Open Records Letter No. 98-1084 (1998) was to order the release to the requestor there, Mr. Shanks, of the memoranda prepared by Mr. Shanks and

“submitted to the city during the course of several internal affairs investigations into his conduct.” You indicate that the city did not interpret Open Records Letter No. 98-1084 (1998) to require release of these memoranda to Mr. Shanks, and that, having neither released anything to Mr. Shanks nor thinking itself obliged to do so, the city considers that it has no information responsive to the instant request from Mr. Kwast. You contend that the statement in the footnote that “section 552.103 does not cover the information the opposing party apparently submitted to the city” must refer only to “information turned over during the course of litigation,” and not to the memoranda at issue here, which were submitted by Mr. Shanks during the internal affairs investigations.

We disagree. Where opposing parties in litigation or anticipated litigation have had access to information, whether or not in the course of the litigation, section 552.103 does not protect such information. *See e.g.* Open Records Decision No. 493 (1988) (letters from Board of Pharmacy to licensees who were anticipated parties to litigation were not protected by litigation exception). The memoranda here from Mr. Shanks to the city are not protected by section 552.103 since Mr. Shanks, the anticipated opposing party in the litigation, has, necessarily, already had access to them. It was our intention in the footnote in Open Records Letter No. 98-1084 (1998) to indicate that these memoranda were not protected by the litigation exception and should be released to the requestor there, Mr. Shanks. Hence, the memoranda should also be considered responsive to the instant request from Mr. Kwast. Moreover, it follows that, since Mr. Shanks, the anticipated opposing party in litigation, has had access to the memoranda, the city may not now avail itself of section 552.103 “litigation exception” protection for this information with respect to Mr. Kwast’s instant request.

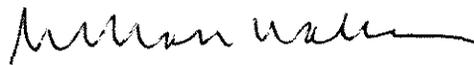
You contend alternatively that the memoranda in question contain information protected by Government Code section 552.101, which requires withholding “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” The common-law privacy aspect of section 552.101 protects information if, 1) it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and*, 2) it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has previously found that “all financial information relating to an individual” may be considered “highly intimate and embarrassing” so as to satisfy the first prong of the common-law privacy test set out above. Open Records Decision No. 373 (1983). Here, the financial information in the memoranda in question relates to personal finances, not financial relations with the governmental body. *Cf.* Open Records Decision No. 545 at 4 (1990) (receipt of governmental funds and debts to public entities not protected because of legitimate public interest). We do not believe there is a legitimate public interest in the personal financial information here. Therefore it must be withheld under section 552.101 in conjunction with common-law privacy. We have marked the parts of the memoranda you must thus withhold.

We also note that some of the information in the memoranda may implicate Government Code section 552.117(2), which requires withholding a peace officer’s home

address, telephone number, social security number, and family information. We have marked information which must be withheld under section 552.117.<sup>1</sup>

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,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/JDB/ch

Ref: ID# 118242

Enclosures: Marked documents

cc: Mr. Arthur H. Kwast  
P.O. Box 1397  
Coppel, Texas 75019-1397  
(w/o enclosures)

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<sup>1</sup>We note that the personal financial information and section 552.117 information in the memoranda which we have discussed above with regard to Mr. Kwast's request, would not be protected from release to Mr. Shank's in response to his prior request, since it is Mr. Shank's privacy interests which the material implicates. *See* Government Code section 552.023(a) (requestor's special right of access beyond right of general public to material protected from public disclosure by laws intended to protect that person's privacy interests).