



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 23, 1998

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

OR98-2287

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118390.

The City of Austin (the city) received a request for six categories of information. The requestor seeks:

1. A copy of any detailed invoice, account statement, or any other submitted justification by Assistant Chief Michael McDonald, Attorney Gary Bledsoe, or any other individual for the \$38,000 payment to Attorney Gary Bledsoe and/or the 34,000 settlement payment to Assistant Chief Michael McDonald.
2. A copy of Police Offense # 97-1250627 and a copy of the DPS Laboratory results of the evidence submitted to DPS.
3. A copy of the resumes and all attachments submitted by Assistant Chief Michael McDonald and Bruce Mills for the job of Police Chief of the Austin Police Department.
4. A copy of all disciplinary letters of suspension in the personnel files of the following ex-police officers: George Herrera, Jamie Balagia, Kevin Behr, David Maddox, Jose Garza, Dell Shaw, Bubba Cates, Steven Orme, Mario Valdez, Jerry Walker, Mike Crow, Anastascio Torres.

5. A copy of all letters of the suspension in the personnel files of the following current police officers: Commander Juan Gonzalez, Commander Lindsay Putman, Commander Gary Olfers, Sergeant Michael Huckabay, Sergeant Joe Regalado, Sergeant John Noble, Sergeant Teddy Nobles, Sergeant Ronald McMillion, Sergeant John Romoser, Detective Michael Shane, Detective Meldon Bass, Officer Mel Villanueva, Officer Roman Lopez, Officer Carlos Casas, Officer Michael Carter, Officer Robert Simmons, Officer Earl Hall, Officer Sheldon Salisbury, Officer Luis Villalobos, Officer Vincent Hernandez, Officer Louis Marquez, Officer Juan Suarez.

6. A list of the police officers with current or expired off-duty work contracts at Club Carnival, Cocktails Night Club, and The Back Door Night Club.

You indicate that there is no responsive information to request number three. You argue that the responsive information in the other requests is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the sample documents you have submitted.¹

Section 552.103(a) excepts from disclosure 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.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *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

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). 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.

Decision No. 551 at 4 (1990). The city must meet both prongs of this test for information to be excepted under 552.103(a).

You explain that city is currently involved in several pending lawsuits. *Huff v. Austin*, No. 97-08262 (345th Dist. Ct., Travis County, Tex., July 18, 1997); *Kelly v. Austin*, No. 97-08263 (353rd Dist. Ct., Travis County, Tex., July 18, 1997); *Connor v. Austin*, No. 97-09065 (200th Dist. Ct., Travis County, Tex., Aug. 8, 1997); *Putman v. Austin*, No. 97-14257 (353rd Dist. Ct., Travis County, Tex.); *Farris v. Austin*, No. 97CA-732 JN (W.D. Tex. filed Oct. 3, 1997). You have provided this office with the petitions or complaints in these cases. You have also provided this office with city's interrogatories and requests for production to the parties in these suits. The city has shown that litigation is pending.

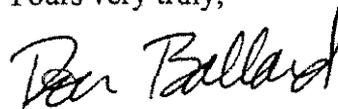
We now examine whether the requested information is related to the pending litigation. "Ordinarily, the words 'related to' mean 'pertaining to,' 'associated with' or 'connected with.'" *Texas Legal Found.*, 958 S.W.2d at 483. You contend that the lawsuits are related in subject matter and are "interwoven and inextricable." You explain that the plaintiffs "claim that they have been the victims of retaliation because they opposed a 'clandestine association of officers within the A.P.D., including high ranking officials, collectively and commonly known as the "family.'" " You state that many of the officers listed in the request have relevant knowledge of the acts of the alleged retaliation. You also state that all of the plaintiffs "are players in the events complained of by the others."

We have examined the sample documents that you have submitted along with the submitted court documents and your arguments. We are able to conclude from these materials that much of the requested information is related to the pending lawsuits. Requests two and six solicit information associated with the pending lawsuits. The request for the letters of suspension of Mr. Dell Shaw and Mr. Bubba Cates in request number four also appear to pertain to the subject matter of the lawsuits. Likewise, the request, in number five, for the letters of suspension of Commanders Juan Gonzalez , Lindsay Putman, Gary Olfers, and Detective Michael Shane are related to the lawsuits. Nonetheless, we do not understand nor have you explained how the accounting information in request number one relates to the pending lawsuits. *See Gov't Code 552.022(3)*. Further, the sample document submitted for request number four, the suspension letter concerning Mr. David Maddox, does not appear to have any connection or association with the lawsuits and the arguments you put forth. Consequently, you may withhold the information requested in numbers two and six under section 552.103. You may also withhold the portions responsive to items four and five seeking information about the following individuals: Mr. Dell Shaw, Mr. Bubba Cates, Commander Juan Gonzalez , Commander Lindsay Putman, Commander Gary Olfers, and Detective Michael Shane. You must, however, release the information responsive to request one. In addition, the city must release the information sought in requests four and five that involve persons other than those specifically excluded above.

Although you may withhold much of the requested information here pursuant to section 552.103, we point out that 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 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/nc

Ref: ID# 118390

Enclosures: Submitted documents

cc: Mr. Cecil Huff
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(w/o enclosures)