



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 15, 1998

Mr. Terrence S. Welch
Vial, Hamilton, Koch & Knox, L.L.P.
1717 Main Street, Suite 4400
Dallas, Texas 75201-7388

OR98-2434

Dear Mr. Welch:

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# 118662.

The Town of Flower Mound (the "town"), which you represent, received two requests for information from the same requestor. The requestor is seeking information from the municipal court docket, documents relating to Richard Randall's assault case, and an itemized accounting of attorney fees paid by the town. You state that the town has released some of this information to the requestor. You object, however, to the release of the municipal court docket of simple assault cases in 1997. You argue that the municipal court docket, a record of the judiciary, is not subject to the Open Records Act. You also object to the release of portions of the arrest reports and witness statements from Mr. Randall's assault case. You contend that the information relating to Mr. Randall's assault case is excepted from disclosure under section 552.103 of the Government Code.

We agree that the municipal court docket is not subject to the Open Records Act, because the Open Records Act does not apply to records of the judiciary. *See* Gov't Code § 552.003(1)(B); Open Records Letter No. 98-1553 (1998). This information may, however, be public by other sources of law. Attorney General Opinions DM-166 at 2-3 (1992) (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974); *see Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released). Additionally, this information may be subject to disclosure under statutory law governing municipal courts. *See* Gov't Code § 29.007(d)(4) (complaints filed with municipal court clerk); *id.* § 29.007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Local Gov't Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order).

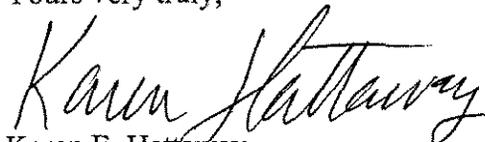
Section 552.103(a) of the Government Code excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section

552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show 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, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). You explain that Mr. Randall "forfeited his seat on the Flower Mound Town Council as of the date of his convictions." Mr. Randall then filed for writ of mandamus against all sitting Town Council Members in their official capacities. You inform us that a Denton County District Judge granted the writ of mandamus, and that the town's appeal of that ruling is pending. We agree that the requested documents relating to Mr. Randall's assault convictions are related to the pending civil litigation involving Mr. Randall and the Town Council Members.¹ Therefore, section 552.103(a) is applicable to these documents.

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 litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. You state that the town has previously released front page information from the requested arrest reports in accordance with *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 597 (1991). To the extent that the other information at issue has not been previously disclosed in litigation or otherwise, we conclude that the town may withhold the information from disclosure under section 552.103(a). Finally, we note that 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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

¹Because we find that the information relating to Mr. Randall's assault convictions is excepted from disclosure under section 552.103(a) in connection with the pending civil litigation, we need not address your additional arguments under section 552.103(a).

KEH/ch

Ref: ID# 118662

Enclosures: Submitted documents

cc: Mr. Tim Wyatt
Staff Writer, News Projects
The Dallas Morning News
Communications Center
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)

these documents to the school district for purposes of de-identification, where possible.⁵ In any event, the board may not release these records to the requestor until such redactions have taken place.

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/RWP/ch

Ref. ID 118681

Enclosures: Submitted documents

cc: Ms. Virginia Villarreal
Les Mendelsohn & Associates, P.C.
Attorneys at Law
1100 Weston Centre
112 E. Pecan Street
San Antonio, Texas 78205-1533
(w/o enclosures)

⁵The school district need not request a decision from this office in order to withhold student identifying information from the board. Open Records Decision No. 634 (1995).