



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 12, 1998

Mr. Robert F. Maxfield
Legal Advisor
Dallas County Sheriff's Department
Frank Crowley Courts Building
Dallas, Texas 75207-4313

OR98-2675

Dear Mr. Maxfield:

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# 119545.

The Dallas County Sheriff's Department (the "department") received a request for records relating to two investigations conducted by the department's Internal Affairs Division. You state that you have released some of the documents from one investigative file. *See* Open Records Letter No. 98-1811 (1998). You contend that most of the documents in the remaining investigative file are excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted documents.

You have not claimed any exceptions to disclosure for documents submitted as items 1, 2, 9, 35, 50, and 54-55. Except for the photograph of the peace officer on page 2, these documents must be released to the requestor. Except in limited circumstances that do not appear to apply to this case at this time, section 552.119(a) protects from disclosure "a photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure." A photograph that depicts a peace officer may be released only if the peace officer consents to the disclosure in writing. Gov't Code § 552.119(b). Thus, the department must withhold the photograph on page 2 from disclosure unless the officer has given his written consent for its release.

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 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. *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 Decision No. 551 at 4 (1990).

You have submitted evidence that two department employees have filed complaints of discrimination against the department with the Texas Commission on Human Rights (the "TCHR"). This office has ruled that a pending complaint before the Equal Employment Opportunity Commission (the "EEOC") indicates a substantial likelihood of litigation relating to the complaint. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). The TCHR operates as a federal deferral agency under section 706(c) of title VII, 42 U.S.C. § 2000e-5. The EEOC defers jurisdiction over complaints alleging employment discrimination to the TCHR. *Id.* We agree that the department reasonably anticipates litigation relating to the discrimination complaints and that the indicated documents relate to the anticipated litigation and may be withheld.

In reaching this conclusion, however, we assume that the opposing parties in the anticipated litigation have not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).¹

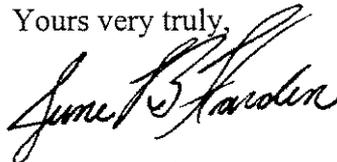
Finally, you claim that the Detention Division Daily Report on page 27 is excepted from disclosure under section 552.111. Section 552.111 excepts "an interagency or

¹We note that some of the information in the submitted documents is confidential by law and must be withheld from disclosure even after section 552.103 no longer protects it from disclosure. We urge the department to exercise caution in releasing this information to the public after its section 552.103 interest in the information expires.

intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency’s policymaking functions, however, do not encompass internal administrative or personnel matter; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. This report is factual and administrative in nature and does not relate to the department’s policymaking function. Thus, we conclude that the report is not excepted from disclosure under section 552.111 and must be released.

Because we are able to make a determination under section 552.103, we need not address your additional arguments against disclosure. 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 119545

Enclosures: Submitted documents

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(w/o enclosures)