



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 11, 1998

Mr. Hugh W. Davis, Jr.
Assistant City Attorney
The City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102-6311

OR98-3066

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 120393.

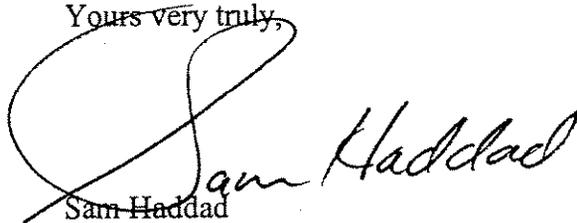
The City of Fort Worth (the "city") received a request for "[a]ll records -- including but not limited to any reports, memos, complaints or any other documents -- regarding an incident on or about Aug. 27, 1998 involving a member or members of the human resources department, or any other individuals, and a potential candidate for a job in the public events department." In response to the request, you submit to this office for review the information which you assert is responsive. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered your claimed exception and have reviewed the information submitted.

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 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 argue that the requested information is related to a pending lawsuit. *Seymour et al. v. Don Magness and the City of Fort Worth* (249th Dist. Ct., Johnson Co.). By showing that litigation is pending, you have satisfied the first prong of section 552.103. However, you have not satisfied the second prong as you have not explained how the requested information relates to the pending litigation. Thus, you may not withhold the requested information pursuant to section 552.103.

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,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/mjc

Ref.: ID# 120393

Enclosures: Submitted documents

cc: Mr. Dianne Hunt
Dallas Morning News
Communications Center
P.O. Box 655237
Dallas Texas 75265
(w/o enclosures)