



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 14, 1998

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

OR98-3082

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# 120319.

The City of Coppel (the "city"), which you represent, received a request for the internal affairs files and personnel files of Officers Lisa Andrus and Michael Scott. You contend that some of the requested material is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed a representative sample of the documents at issue.<sup>1</sup>

Section 552.103(a) of the Government Code, the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. 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 (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 section 552.103(a).

You explain that Ms. Lisa Andrus was terminated from her position as police officer with the Coppel Police Department following an internal affairs investigation. You submitted a copy of a petition to show that Ms. Andrus has filed a lawsuit against the city in federal court claiming that she was wrongfully terminated. *Andrus v. City of Coppel*, No. 3-98CV2614-G (N.D. Tex. filed Nov. 5, 1998). You have shown that litigation

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<sup>1</sup>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.

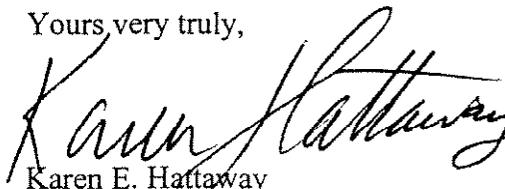
involving Ms. Andrus is pending. We have reviewed her internal affairs and personnel files and agree that they are related to the pending litigation.

You advise that Mr. Michael Scott was terminated from his position as police officer with the Coppell Police Department following an internal affairs investigation. You submitted a copy of an August 24, 1998 petition to show that Mr. Scott has filed suit against the city for unlawful retaliation under Government Code sections 554.001 *et seq.*, the "Whistleblower Act." You assert that his internal affairs and personnel files are relevant to the pending lawsuit and will likely be used as evidence. We agree that these files are related to the pending litigation.

Because the files relating to Ms. Andrus and Mr. Scott are related to pending litigation, we generally agree that section 552.103(a) applies to the files. However, the files include documents that were obtained from or have been provided to the opposing parties in the lawsuits. Information that has either been obtained from or provided to the opposing party in litigation, through discovery or otherwise, is not excepted from disclosure under section 552.103(a), and it must be disclosed.<sup>2</sup> Open Records Decision Nos. 349 (1982), 320 (1982). The city may withhold the remaining information in the files from disclosure under section 552.103(a). We note that the applicability of section 552.103(a) ends once the litigation has 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,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>We are unable to determine precisely which documents in the files were obtained from or have been provided to the opposing parties in the litigation. Although the city may not be able to withhold all documents in these files from disclosure under section 552.103(a), we note that some of these documents may also be excepted from disclosure under sections 552.101 and 552.117 of the Government Code. See Gov't Code § 552.352 (criminal penalties for distribution of confidential information). We refer you to Open Records Letter No. 98-2997 (1998) in which we applied sections 552.101 and 552.117 to the documents in Ms. Andrus's personnel file. The city should also use Open Records Letter No. 98-2997 (1998) as a guide for withholding information from Mr. Scott's personnel file pursuant to sections 552.101 and 552.117.

Ref: ID# 120319

Enclosures: Submitted documents

cc: Michael Ryan, Reporter  
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(w/o enclosures)