



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 15, 1998

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

OR98-3136

Dear Ms. Ross:

On behalf of the City of Coppell (the "city"), you ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120614 (your City Request No. 4406).

The city received a request for the personnel files of Officers Lisa Andrus and Shaun Hopkins to include information about disciplinary actions. You contend that this information is excepted from disclosure under sections 552.101, 552.103, and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed a representative sample of the documents at issue.¹

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).

¹We 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.

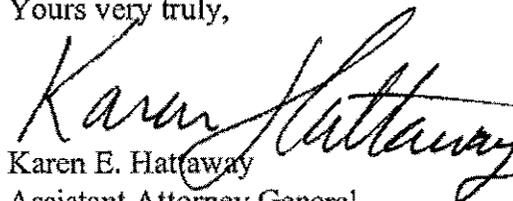
You explain that Ms. Lisa Andrus was terminated from her position as police officer with the Coppell Police Department following an internal affairs investigation. You submitted a copy of a petition to show that Ms. Andrus has filed a lawsuit against the city in federal court claiming that she was wrongfully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

Because the requested documents are related to pending litigation, we generally agree that section 552.103(a) applies to the documents. However, some of the documents were obtained from or have been provided to the opposing party in the litigation. 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). Open Records Decision Nos. 349 (1982), 320 (1982). The city may withhold the remaining documents 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 unable to determine precisely which documents were obtained from or have been provided to the opposing party in the litigation. Although the city may not be able to withhold all of the documents at issue 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 use ORL 98-2997 as a guide for withholding information from the documents at issue here pursuant to sections 552.101 and 552.117.

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

KEH/ch

Ref: ID# 120614

Enclosures: Submitted documents
Open Records Letter No. 98-2997 (1998)

cc: Mr. George Borkel
653 Thompson Drive
Coppell, Texas 75019
(w/Open Records Letter No. 98-2997 (1998))