

January 22, 1999

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

OR99-0213



OFFICE OF THE  
ATTORNEY GENERAL  
STATE OF TEXAS

— \* —  
JOHN CORNYN  
Attorney General

— \* —  
P.O. Box 12548  
Austin, Texas  
78711-2548  
(512) 463-2100  
www.oag.state.tx.us

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# 121596.

The City of Coppell (the "city") received a request for an Internal Affairs file, number 98-121, which relates to an investigation of former city police officer Danny Harm. You seek to withhold the requested file under sections 552.101, 552.103 and 552.117 of the Government Code.

Section 552.103(a) exempts from required public 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.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You contend that the requested records relate to a lawsuit the city anticipates will be brought against it by Lisa Andrus, another former city police officer. You

Printed on Recycled Paper

An Equal Employment  
Opportunity Employer

provide documentation indicating that Ms. Andrus has engaged an attorney, appealed her termination from the police department, and filed a "Petition to Perpetuate Testimony of Employees of the City of Coppel." We conclude that the city may reasonably anticipate litigation by Ms. Andrus. Having examined file number 98-121, we conclude that it relates to such anticipated litigation. Accordingly, you may withhold the requested information under section 552.103(a).

We assume, however, that none of the information in the records at issue has previously been made available to Ms Andrus. Absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent the opposing party has seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a). Similarly, section 552.103(a) does not authorize the city to withhold materials which have already been made available to the public pursuant to a decision of this office or otherwise. Open Records Decision No. 436 (1986). Since we have disposed of this request under section 552.103(a), we do not address your other claimed exceptions to 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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/ch

Ref: ID# 121596

Enclosures: Submitted documents

cc: Mr. R. G. Harrell  
548 W. Oak Grove  
Coppel, Texas 75019  
(w/o enclosures)