



July 15, 1999

Ms. Sara Fauls  
City Attorney  
City Attorney's Office  
P. O. Drawer 1449  
Copperas Cove, Texas 76522

OR99-1986

Dear Ms. Fauls:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 126115.

The City of Copperas Cove (the "city") received an open records request for

Inspections – citation – court files pertaining to fire inspection of Halls  
Video in Oct. 1998. Record of trial of Kimberly Hall in that case.

You have submitted the responsive documents to this office for review. As a threshold matter, we first address your contention that many of the records at issue are not subject to the Texas Public Information Act because the records are on file with the city's municipal court and therefore constitute records of the judiciary.

The Texas Public Information Act neither authorizes information held by the judiciary to be withheld nor requires it to be disclosed. Open Records Decision No. 25 (1974). *See also* Gov't Code § 552.003(1)(B) (excluding judiciary from definition of "governmental body"). Consequently, the provisions of the Texas Public Information Act are inapplicable to records that are held by the judiciary. *But see* Open Records Decision No. 274 (1981) (citations held by municipal court made public under other laws giving municipal court clerks same duties as county clerks). We agree that to the extent the request seeks only court held records, these records are not subject to the Texas Public Information Act.

Please note, however, that copies of records that have been filed with a court are not excepted from required public disclosure when held by a governmental official who does not hold those copies as an agent of the court. *Cf.* Open Records Decision No. 513 (1988) (evidentiary information held by district attorney not judicial record merely because information submitted to grand jury); *see also* Gov't Code § 552.022(17) (making "information that is also contained in a public court record" "public information"). Consequently, to the extent that copies of the records at issue are held by any city employee

who is not acting as an agent of the court, those records are subject to the Texas Public Information Act. Because it is not clear to this office the extent to which such is the case here, we will address the applicability of the exceptions you raised in the event that any of these documents are otherwise held by city officials.

You contend that some of the information contained in the records implicates the privacy interests of the criminal defendant and therefore must be withheld from the public pursuant to section 552.101 of the Government Code. *See generally Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information contained in public court records may not be withheld from the public on privacy grounds. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (no privacy interest in information contained in public court records). Accordingly, the city may not withhold filed court records pursuant to section 552.101.

You next contend that some of the records at issue are excepted from required public disclosure pursuant to the "law-enforcement" exception, section 552.108 of the Government Code. Basically, section 552.108 excepts from required public disclosure three categories of information: information relating to pending criminal investigations and prosecutions, Gov't Code § 552.108(a)(1), (b)(1), information relating to criminal investigations and prosecutions that have concluded and did not result in a conviction or deferred adjudication, Gov't Code § 552.108(a)(1), (b)(2), and information that would constitute the prosecuting attorney's work product, Gov't Code § 552.108(a)(3), (b)(3).

You do not argue that any of the records at issue constitute work product. Further, because the records at issue pertain to a concluded investigation of a Class C misdemeanor that has resulted in a deferred adjudication, the remaining subsections of section 552.108 are inapplicable. The city may not withhold the records at issue pursuant to section 552.108.

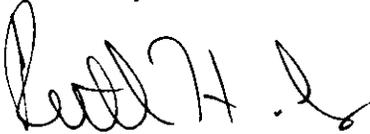
Finally, you contend that the city may withhold some of the records pursuant to section 552.103 of the Government Code. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); Open Records Decision No. 588 at 1 (1991). However, 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). Because the criminal defendant has had prior access to all of the records for which you claim section 552.103, this exception is inapplicable to those records.

As you have raised no applicable exception for records held by the city in a non-judicial capacity, the city must release all such records to the requestor. You must release Exhibit B, as neither sections 552.103 nor 552.108 protect it from disclosure. If Exhibits C through

G are records the judiciary only, these records are not subject to disclosure under the Texas Public Information Act.

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy". The signature is fluid and cursive, with a distinct loop at the end.

Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/RWP/eaf

Ref: ID# 126115

Encl: Submitted documents

cc: Mr. Frank Dimuccio, Jr.  
2314 E. Highway 190  
Copperas Cove, Texas 76522  
(w/o enclosures)