



September 30, 1~~99~~

Mr. Rex McEntire
City Attorney
City of North Richland Hills
P.O. Box 820609
North Richland Hills, Texas 76182-0609

OR99-2770

Dear Mr. McEntire:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129399.

The North Richland Hills Police Department (the "department") received a request for copies of two police files related to searches and arrests executed by the department on two occasions. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a) excepts from 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.

The department 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 department must meet both prongs of this test for information to be excepted under 552.103(a).

We now examine whether the department has shown that litigation is pending or reasonably anticipated and that the requested information is related to the litigation. First, you have provided our office with a letter date June 1, 1999, from Mr. J.W. Richards II of the law firm of Johnny W. Richards II, P.C. The letter indicates that the firm represents plaintiffs in a proposed lawsuit which will allege police abuse related to the two home searches. The letter states, "[N]either my client nor I are inclined to settle this matter. Please take this letter as notice of suit to be filed against the City of North Richland Hills." This document constitutes "concrete evidence" that litigation involving the actions of the city regarding the landfill site can be reasonably anticipated. Additionally, we have examined the submitted documents and have determined that they are related to the reasonably anticipated litigation for purposes of section 552.103(a). Therefore, you may withhold most of the information contained in the submitted documents.

However, the litigation exception does not except all of the subject information from disclosure. Even where litigation is reasonably anticipated, basic factual information about a crime must be released. Open Records Decision No. 362 (1983). Information normally found on the front page of an offense report is generally considered public, and must be released. *Houston Chronicle Publ'g Company v. City of Houston*, 531 S.W.2d 177 (Tex Civ. App.-- Houston [14th Dist. 1975, writ ref'd n.r.e.); see Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, including a detailed description of the offense and arrest, even if this information is not actually located on the front page of the offense report.

Additionally, several of the documents appear to be records filed with a court. Documents filed with a court are generally considered public and must be released. *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992). Additionally, you have submitted search warrant affidavits for warrants that have been executed. We note that an affidavit to support a search warrant is made public by statute if it has been executed. Code Crim. Proc. art. 18.01(b). The Public Information Act's exceptions do not, as a general rule, apply to information expressly made public by other statutes or law. Open Records Decision No. 525 (1989). Therefore, the search warrant affidavits must be disclosed.

We note that if the opposing party in the litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney

General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). However, if the records contain information that is confidential by law, you must not release such information even at the conclusion of the litigation. Gov't Code §§ 552.101, .352. ¹

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,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ljp

Ref: ID# 129399

Encl. Submitted documents

cc: Mr. J. W. Richards II
Johnny W. Richards II, P.C.
6647 Grapevine Highway
Suite 101
North Richland Hills, Texas 76180-1570
(w/o enclosures)

¹As we resolve this matter under section 552.103, we caution that some of the information may be confidential by law or may implicate the proprietary interest of a third party. Therefore, if the department receives a request in the future, at a time when litigation is no longer reasonably anticipated or pending, the department should seek a ruling from this office before releasing any of the requested information. See Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).