



December 1, 1999

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR99-3450

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130216.

The City of El Paso (the “city”), received a request for internal affairs history cards and supplemental printouts on two named police officers as well as a copy of the investigation of a specified incident. The city indicates that it has released the internal affairs history cards and supplemental printouts. The city claims most of the remaining responsive information is excepted from public disclosure by sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions claimed and reviewed the submitted information.

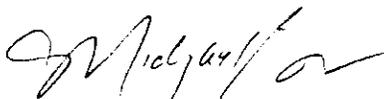
Section 552.103(a), the “litigation exception,” excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The governmental body claiming this exception has the burden of providing relevant facts and documents to show that the section 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). Further, to be excepted under section 552.103, the information must relate to litigation that is pending or reasonably anticipated on the date that the information was requested. Gov't Code § 552.103(c).

You have supplied a letter that the city received before its receipt of the request for information. This letter asserts claims in connection with the subject incident. You assert that the letter complies with the notice requirements of Chapter 1 of the Civil Practices and Remedy Code, the Texas Tort Claims Act. You have thereby established reasonable anticipation of litigation. *See* Open Records Decision No. 638 (1996) (fact that governmental body received claim letter that it represents to this office to be in compliance with notice requirements of Texas Tort Claims Act, Civ. Prac. & Rem. Code ch. 101, or applicable municipal ordinance shows that litigation is reasonably anticipated). We have reviewed the submitted information and conclude that it relates to this pending litigation. We conclude that the subject information may be withheld pursuant to Government Code section 552.103.

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); *see also* Gov't Code § 552.108(c). Information normally found on the front page of an offense report is generally considered public, and must be released *Houston Chronicle Publishing 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). You indicate that the city has released "redacted copies of the criminal case incident reports, which are the first pages of each case." Note that 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.

As the above discussion under section 552.103 addresses the information at issue, we do not discuss the arguments raised under other sections of the Government Code. 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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 130216

Encl. Submitted documents

cc: Mr. W. Brent Stephens
6108 Yaqui Way, Suite A
El Paso, Texas 79925
(w/o enclosures)