



December 28, 1999

Mr. John Steiner
Division Chief
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR99-3792

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#130844.

The City of Austin (the "city") received a request for information relating to a particular police officer. You inform us that much of the requested information is located in the personnel file of the police officer. For that information, you have referred the requestor to the director of the Civil Service Commission pursuant to section 143.089(g) of the Local Government Code. *See City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied). You claim that the remainder of the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show 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).

You explain that the requested information is related to a criminal case pending in the 299th District Court of Travis County (cause number 99-2066). You have supplied this office with

a letter from the Travis County District Attorney's Office asking the city to withhold the requested information under sections 552.103 and 552.108. Additionally, you explain that the requested information involves a pending mandamus proceeding. *Ramirez v. Knee*, No. 99-10441 (53rd Dist. Ct., Travis County, Tex., filed Sept. 8, 1990 (orig. proceeding)). You have supplied to this office a copy of the petition in that case for our review. We find that you have shown the applicability of section 552.103. Litigation is pending and the requested information relates to the pending litigation with the city. *Texas Legal Found.*, 958 S.W.2d at 483. Therefore, you may withhold the requested information under this section.

Because we are able to make a determination under section 552.103 of the Government Code, we need not address your claim under section 552.108. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/ljp

Ref: ID#130844

Encl. Submitted documents

cc: Ms. Marita Heyden
The Villager
12233 A Rosewood Avenue
Austin, Texas 78702
(w/o enclosures)