



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 14, 1994

Ms. Tamara Armstrong  
Assistant County Attorney  
Travis County Courthouse  
P.O. Box 1748  
Austin, Texas 78767

OR94-539

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 22572.

The Travis County District Attorney's Office received an open records request from Mr. Carlos Lavernia for certain records contained in his prosecution file. You contend that your office may withhold these records pursuant to the Open Records Act, section 552.103 of the Government Code. To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990).

Although the prosecution of Mr. Lavernia has ended, you inform us that Mr. Lavernia has not yet exhausted his postconviction remedies and therefore contend that the requested information may be withheld pursuant to section 552.103(b), which provides:

(b) For purposes of this section, the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court.

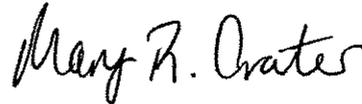
Based upon your representation that Mr. Lavernia has not exhausted his postconviction remedies, we find that in this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). The requested records may therefore be withheld at this time.<sup>1</sup>

<sup>1</sup> Because we resolve your request under section 552.103, we need not address your section 552.108 arguments at this time. P.O. BOX 12548 AUSTIN, TEXAS 78711-2548

In reaching this conclusion, however, we assume that neither Mr. Lavernia nor his legal counsel has previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If Mr. Lavernia or his counsel has seen or had access to any of the information in these records, there would be no justification for now withholding that information pursuant to section 552.103(a). For the same reason, your office may not withhold pursuant to section 552.103 any records that contain information maintained by the district clerk in public court files.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Open Government Section

MRC/RWP/rho

Ref.: ID# 22572

Enclosures: Submitted documents

cc: Mr. Carlos M. Lavernia  
TDCJ No. 391204  
Eastham Unit  
P.O. Box 16  
Lovelady, Texas 75851  
(w/o enclosures)