



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 29, 1995

Mr. Patrick C. Batchelor
Criminal District Attorney
Navarro County Courthouse
P.O. Box 521
Corsicana, Texas 75151-0521

OR95-1025

Dear Mr. Batchelor:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 33773.

The Navarro County Criminal District Attorney's Office (the "district attorney's office") has received a request for the criminal file of a defendant in a capital murder case. You assert that the file contains "information that deals with the detection, investigation, and prosecution of" the capital murder case. You have submitted a representative sample of the contents of the file and claim that such documents are exempted from required public disclosure under sections 552.103 and 552.108 of the act.

Section 552.103 excepts from required public disclosure information relating to litigation "to which the state or political subdivision . . . is or may be a party." Gov't Code § 552.103(a). More specifically, section 552.103(a) excepts from required 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 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.

This exception is designed to keep the Open Records Act from operating as a method of avoiding the rules of discovery. Attorney General Opinion JM-1048 (1989) at 4. In Open Records Decision No. 551 (1990) at 3, this office stated:

[Section 552.103] enables governmental entities to protect their position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery, if at all. [citations omitted.] We do not believe that the Open Records Act was intended to provide parties involved in litigation any earlier or greater access to information than was already available directly in such litigation.

Section 552.103 requires concrete evidence that litigation is realistically contemplated; it must be more than mere conjecture. Open Records Decision Nos. 518 (1989) at 5, 328 (1982). Thus, to secure the protection of this exception, 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); see also Open Records Decision No. 588 (1991) (contested case under Administrative Procedure Act is litigation for purposes of section 552.103 exception). Furthermore, section 552.103(b) provides that

. . . 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 post conviction remedies in state and federal court.

You state that the defendant has obtained counsel to represent him in a habeas corpus proceeding to be filed in the federal court. The defendant has not exhausted all appellate and post-conviction remedies available to him. Hence, we have reviewed the representative documents submitted to this office and conclude that they may be withheld from required public disclosure pursuant to section 552.103 of the act. However, if the defendant has obtained access to these documents through the discovery process or otherwise, no section 552.103(a) interest will generally exist in that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, if the requestor has access to these documents, there is no justification for withholding that information pursuant to section 552.103(a).

We note, however, that basic information in an offense report may not be withheld from disclosure under section 552.103(a). See Open Records Decision No. 597 (1991). In *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the court identified certain types of information which are public.

Although this information is generally found on the first page of an offense report, its location is not determinative. It must be released regardless of where it is found. To determine what information must be released, the type of information must be examined rather than where it is located. See Open Records Decision No. 127 (1976) at 5. To the extent that this information has been released to the defendant in criminal litigation, it must now be released to the requestor.¹

Because we have concluded that the requested documents may be withheld under section 552.103 we decline to make any further analysis with reference to their disclosure. 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 may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Toya Cirica Cook
Assistant Attorney General
Open Records Division

TCC/RHS/rho

Ref: ID# 33773

Enclosures: Submitted documents

cc: Mr. Robert P. Abbott
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(w/o enclosures)

¹We note that court records are subject to public access. Attorney General Opinion DM-166 (1992); Open Records Decision No. 25 (1974).