



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 29, 1995

Mr. Ray Rike
Assistant District Attorney
Tarrant County
401 West Belknap Street
Fort Worth, Texas 76196-0201

OR95-1302

Dear Mr. Rike:

You ask whether certain information is subject to required public disclosure pursuant to chapter 552 of the Government Code. We assigned your request ID# 27918.

The Tarrant County Criminal District Attorney's Office (the "district attorney"), the Tarrant County Sheriff's Department (the "sheriff"), and the City of Mansfield (the "city"), through its police department, have received requests for information relating to Jerry Lee Hogue, and Earl Russell Behringer, both inmates of the Texas Department of Criminal Justice currently under sentences of death, and Lawrence Scott Rouse, an inmate of the Texas Department of Criminal Justice currently serving a sentence of 40 years for murder. Generally, the requestor seeks all information in the possession of the district attorney, the sheriff, and the city relating to these three individuals. We note that in your letter to this office, you state that some of the requested information includes "court orders, warrants, and various court papers, [that] should be copied for release." We assume, based upon this statement, that you are not seeking to withhold these types of documents from the requestor. Additionally, we assume that you have already released these types of documents to the requestor. You have submitted for our review a representative sample of the requested documents.¹ You inform us that the requestor

¹In reaching our conclusion here, we assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize

obtained an authorization for the release of records from one of the individuals to whom the requested information relates. You seek to withhold the requested information pursuant to sections 552.101, 552.103, 552.107, 552.108, and 552.111 of the Government Code.

You advise us that Mr. Hogue is presently seeking habeas corpus relief in federal court in *Hogue v. Scott*, United States District Court for the Northern District of Texas, Fort Worth Div., No. 4:92-CV-359-A. Additionally, you advise us that an attorney has been appointed to represent Mr. Behringer in an imminent habeas corpus action. Mr. Rouse is not currently a party to litigation against the state.

You contend that section 552.103, commonly referred to as the litigation exception, excepts the requested information from required public disclosure. 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.

Section 552.103(a) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information related to that litigation. Open Records Decision No. 551 (1990). However, section 552.103(a) cannot be invoked to withhold the type of information generally located on the first page of an offense report. See Open Records Decision No. 597 (1991) (this type of information has generally already been made available to defendant during charge and indictment). Furthermore, section 552.103(a) cannot be invoked to withhold information if the opposing party in the litigation has previously had access to it. Absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982).

(Footnote continued)

the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We conclude that the district attorney, sheriff, and city are parties to pending or reasonably anticipated litigation. In this instance you have made the requisite showing that the requested information relates to litigation or anticipated litigation for purposes of section 552.103(a). In reviewing the submitted documents, we believe that many of them may have already been seen by the opposing parties. These documents may not now be withheld from the requestor pursuant to section 552.103(a). Accordingly, unless already released to the opposing parties through discovery, disclosure, court order, or other means, the requested information may be withheld from required public disclosure under section 552.103(a) of the Government Code with the exception of the type of information generally located on the front page of an offense report. Additionally, the applicability of section 552.103(a) ends once the litigation or anticipated litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Among the records submitted for our review are medical records. Section 5.08 of the Medical Practice Act, article 4495b, V.T.C.S., generally makes records of the treatment of a patient created by or under the supervision of a physician confidential, but also provides, in pertinent part:

(h) Exceptions to the privilege of confidentiality, in other than court or administrative proceedings, allowing disclosure of confidential information by a physician, exist only to the following:

....

(5) any person who bears a written consent of the patient or other person authorized to act on the patient's behalf for the release of confidential information, as provided by Subsection (j) of this section.

V.T.C.S. art. 4495b, § 5.08. Subsection (j) provides, in pertinent part:

(1) Consent for the release of confidential information must be in writing and signed by the patient . . . provided that the written consent specifies the following:

(A) the information or medical records to be covered by the release;

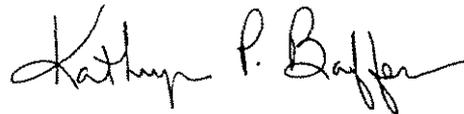
(B) the reasons or purposes for the release; and

(C) the person to whom the information is to be released.

V.T.C.S. art. 4495b, § 5.08(j). In Open Records Decision No. 546 (1990), this office concluded that the requestor was not entitled to medical records on the basis of a release which did not state the reasons or purposes for releasing the records. We come to the same conclusion here. The release submitted to us for review states neither the reasons nor the purposes for releasing the medical records. Accordingly, the consent does not comply with section 5.08(j)(1)(B), and any medical records may not be released in accordance with section 5.08 of the Medical Practice Act.

As we resolve this request under sections 552.101 and 552.103(a) of the Government Code, we need not address the applicability of sections 552.107, 552.108, and 552.111 at this time.² 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 this office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/GCK/ch

Ref.: ID# 27918

Enclosures: Submitted documents

cc: Ms. Jan E. Hemphill
Attorney at Law
4519 West Lovers Lane
Dallas, Texas 75209
(w/o enclosures)

²We note that some of the requested information may include records generated by the National Crime Information Center (NCIC). Such information may be released only in accordance with title 28, part 20 of the Code of Federal Regulations, which governs the release of criminal history record information which states obtain from the federal government or other states. Open Records Decision No. 565 (1990).