



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 24, 1996

Mr. Richard O. Burst
Assistant Cameron County Attorney
Cameron County Courthouse
974 E. Harrison Street
Brownsville, Texas 78520

OR96-0796

Dear Mr. Burst:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40382.

The Cameron County District Attorney (the "district attorney") received a request for a complaint and investigation files concerning an alleged criminal offense. You assert that the information at issue is excepted from disclosure under section 552.103(a). You submitted to this office, for review, the records at issue.

We note initially that at least one of the submitted records, a letter addressed to a grand jury foreman, appears to be a grand jury record. In Open Records Decision No. 513 (1988), this office concluded:

The Open Records Act does not apply to information within the actual or constructive possession of the grand jury. When an individual or entity acts at the direction of a grand jury as the grand jury's agent, information held or collected by the agent is within the grand jury's constructive possession.

The grand jury, as an extension of the judiciary, is not a "governmental body" subject to the provisions of chapter 552. See Gov't Code § 552.003(1)(B). We assume that the district attorney is serving as the grand jury's agent in maintaining this letter, which is not public information as defined in section 552.002(a). You need not honor a request for grand jury records.

You also have submitted to this office records that you state are part of the district attorney's criminal case file regarding an alleged felony offense. It does not appear that charges were ever filed, and you state that the file "has been closed by the District Attorney's Office and will not be re-opened unless further information is received on the offense within the period of the statute of limitations." You contend that the records at issue may be withheld from disclosure under section 552.103(a) until the applicable statute of limitations has expired.

Section 552.103(a) provides that information may be excepted from public disclosure if it is 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(b) also 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 postconviction remedies in state and federal court."

However, to secure the protection of section 552.103(a), a governmental entity must first show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *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 (1990) at 4. You have not shown that litigation is pending or reasonably anticipated in this situation. Since you have not shown that section 552.103) is applicable to the records at issue, they must be released.¹

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

¹You have expressed concern that the district attorney may not release the records at issue until this office has issued a decision. We note that section 552.103(a) is a discretionary exception that can be waived by the governmental body. See Open Records Decision No. 542 (1990) at 4. Section 552.007 also provides that chapter 552 does not prohibit a governmental body "from voluntarily making part or all of its information available to the public, unless the disclosure is expressly prohibited by law."

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.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 40382

Enclosures: Submitted documents

cc: Mr. George Kraehe
Willette & Trevino
International Plaza Suite 460
3505 Boca Chica Boulevard
Brownsville, Texas 78521
(w/o enclosures)