



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 17, 1996

Mr. C.E. Thomas, III
City Attorney
310 Nolan
Big Spring, Texas 79720-2657

OR96-1160

Dear Mr. Thomas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40481.

The City of Big Spring (the "city") received a request for eight categories of information concerning the arrest and death of Douglas Keith Frank. You state that the city has provided the requestor with the arrest and incident report, the booking sheet, a copy of the jail register, and a list of personnel on duty May 10, 1994. You assert, however, that the remaining requested information is excepted from required public disclosure by section 552.103 of the Government Code. You have submitted for our review the information which you seek to withhold.

We note initially, however, that you seek to withhold a copy of an autopsy report and a custodial death report. Autopsy reports prepared by a medical examiner are public records by statute. Code Crim. Proc. art. 49.25 § 11; Open Records Decision No. 529 (1989). Likewise, section I of the custodial death report is public by law and must be released to the requestor. See Code Crim. Proc. art. 49.18; Open Records Decision No. 521 (1989).

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.

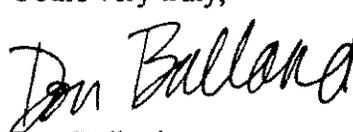
The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related 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. The city must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you state that the city is currently involved in litigation. You have provided this office with a copy of the complaint in that cause, *Melcer v. City of Big Spring*, No. 196-CV-0133C (N.D. Tex. filed May 7, 1996). After reviewing the remaining submitted materials, we conclude that litigation is pending and that the requested documents relate to the litigation. The city has, therefore, met its burden under section 552.103 and may withhold the requested information. Basic information in an offense report, however, may not be withheld under section 552.103. Open Records Decision No. 597 (1991).

Generally 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). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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 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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 40481

Enclosures: Submitted documents
Summary of Open Records Decision No. 127 (1976).

cc: Mr. Tim Ervin
Peary Perry and ASSOCIATES
1235 North Loop West, Suite 907
Houston, Texas 77008
(w/o documents; w/Summary of Open Records Decision No. 127 (1976))