



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 14, 1996

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR96-1450

Dear Mr. Weir:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 32373.

The City of San Antonio (the "city") received a request for "records of an incident that occurred on June 2, 1994, involving Leonard Diaz, who was found unconscious on that date in a holding cell in the City's Detention Center and later died after being taken to the hospital." You assert that the requested information is excepted from required public disclosure pursuant to section 552.103(a) of the Government Code.

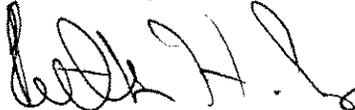
Section 552.103(a) excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party. The city has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, a city must 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 shown that litigation is pending as a result of a wrongful death suit which was filed against the city, and you have demonstrated how the requested information relates to that litigation. We note, however, that the city must release the type of information concerning the arrest, normally found on the first page of the offense report, even if this information is not actually located on the first page of the offense report. You may withhold the other information at issue under section 552.103.

We note that the applicability of section 552.103(a) ends if the other party to the anticipated litigation obtains the information or when the litigation concludes. Attorney General Opinion MW-575 (1982) at 2; Open Records Decisions Nos. 350 (1982) at 3; 349 (1982) at 2. We also note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, Open Records Decision No. 542 (1990) at 4, the city could choose to release the information at this time. Gov't Code § 552.007.

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 fact 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/SAB/ch

Ref.: ID# 32373

Enclosures: Submitted documents

cc. Ms. Barbara Chandler
Eddie Morrie Court Reports, Inc.
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(w/o enclosures)