



Office of the Attorney General
State of Texas

August 30, 1994

DAN MORALES
ATTORNEY GENERAL

Ms. Mercedes Leal
Senior Assistant County Attorney
Harris County Attorney's Office
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR96-1576

Dear Ms. Leal:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100633.

Harris County (the "county") received two requests for information relating to the investigation of the murders of Martha Parmer Durett and Linda Parmer Harrison. Some of the requested information is contained in the Medical Examiner's autopsy reports, and will, therefore, be released in compliance with section 11, article 49.25 of the Code of Criminal Procedure. You contend, however, that the remaining information, none of which is contained in the autopsy reports, is excepted from disclosure pursuant to section 552.103 of the Government Code.

Initially, we recognize that one of the requests for information was served on the county by one of its own employees. It is unclear whether this individual is requesting the information in her official capacity as a county employee or as a member of the general public. We note when an employee of a governmental body, acting in her official capacity, requests access to information in the governmental body's possession, the Open Records Act does not control the employee's right of access to the information. Attorney General Opinion JM-119 (1983). For purposes of this ruling, we assume that you consider the county employee's request for information to be a request from a member of the general public.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body 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, the governmental body 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. The district attorney has demonstrated that he reasonably anticipates the filing of criminal charges in connection with these murders. As the information at

issue relates to reasonably anticipated criminal litigation, the county may withhold the information from disclosure under section 552.103(a). *See* Open Records Decision No. 469 (1987) at 2.

We note that once all parties to litigation have gained access to the information at issue, through discovery or otherwise, section 552.103(a) is no longer applicable to the information. Open Records Decisions Nos. 551 (1990), 454 (1986). Further, once the litigation has concluded, section 552.103(a) is no longer applicable to information related to the litigation. Open Records Decision No. 350 (1982). Of course, the county has discretion to release information that is not otherwise confidential by law. 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 facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 100633

Enclosures: Submitted documents and audio tape

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