



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 17, 1996

Mr. Robb D. Catalano
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
2014 Main Street
Dallas, Texas 75201

OR96-1695

Dear Mr. Catalano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100981.

The Dallas Police Department (the "department") received a request for an offense report, Service No. 0560353-E. You contend the requested information is excepted from required public disclosure under section 552.103 of the Government Code.

When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation.¹ Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish (1) that litigation is either pending or reasonably anticipated and (2) that the requested information relates to that litigation. *See 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. In this instance, you have made the requisite showing that criminal litigation is pending and that the requested information relates to that litigation. Consequently, you may withhold the requested information at this time.

¹Section 552.103(a) excepts from required public 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.

In reaching this conclusion, however, we assume that the opposing parties to the pending litigation have not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the pending litigation have seen or had access to any of the information in these records, there may not withhold that information from the requestor pursuant to section 552.103(a). We also note that 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 this 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 may 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,

A handwritten signature in black ink that reads "Todd Reese". The signature is fluid and cursive, with a long horizontal line extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 100981

Enclosure: Submitted document

cc: Mr. Robert F. Bull
International Claims Specialists
1111 West Mockingbird, Suite 600
Dallas, Texas 75247
(w/o enclosure)