



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 10, 1996

Mr. Robb D. Catalano  
Assistant City Attorney  
Municipal Building  
Dallas, Texas 75201

OR96-1842

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# 101101.

The City of Dallas (the "city") received a request for "a copy of a 911 tape and phone call made on July 3, 1996." You claim that requested information is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the information at issue.

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.

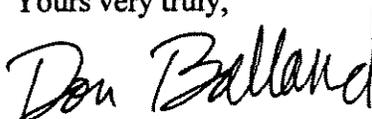
The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related 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 requested information relates to pending criminal litigation of the Dallas County District Attorney. You have provided this office with a letter from Mr. Donald G. Davis, the prosecuting attorney in that case. He states that a criminal case is pending and that he seeks to withhold the requested tapes. After reviewing the submitted materials, we conclude that litigation is pending and that the audio tapes relate to that litigation.<sup>1</sup>

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 litigation is not excepted from disclosure under section 552.103(a). 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 questions about this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref: ID# 101101

Enclosures: Submitted documents

cc: Mr. Reed W. Prospere  
Prospere & Russell  
8111 Preston Road, Suite 500  
Dallas, Texas 75225  
(w/o enclosures)

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<sup>1</sup>In his request for information, the requestor refers to a "motion filed" and an "order signed" regarding the responsive audio tapes. If, in fact, an order has been signed by the court requiring the city to release this information to the requestor, the city should comply with the terms of that order.