



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 6, 1996

Mr. Robert J. Gervais
Assistant City Attorney
City of Galveston Legal Department
P.O. Box 779
Galveston, Texas 77553-0779

OR96-2308

Dear Mr. Gervais:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 102911.

The Galveston Police Department received an open records request for records pertaining to the arrest of an individual and the investigation into allegations that that individual was assaulted by other inmates in the Galveston City Jail. You contend the requested records may be withheld from the public pursuant to section 552.103(a) of the Government Code. To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. In this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). Accordingly, most of the requested records may be withheld under this section.

In reaching this conclusion, however, we assume that the opposing party to the litigation has 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 litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). In this regard, we note that several of the documents submitted to this office contain the signature of the plaintiff in the lawsuit against the city. Because the plaintiff has had prior access to these records, they may not be withheld under section 552.103.

We also note that there is evidence in the records submitted to us that at least some of the "front page offense report information" has previously been released to the opposing party in the litigation. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Regardless of whether such is the case, the front page offense report information pertaining to each of the offenses identified during the investigation of the assault must be released, as must all "book in" information. *See id.* *See also* Open Records Decision No. 597 (1991) ("front page offense report information" not excepted from disclosure under "litigation exception").

Finally, we note that some of the documents before us consist of EMS and other medical records. These records must be released to the requestor, but only in accordance with section 773.093 of the Health and Safety Code and article 4495b, V.T.C.S., respectively.

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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/ch

Ref.: ID# 102911

Enclosure: Submitted documents

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(w/o enclosures)