



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 11, 1996

Mr. Patrick S. Dohoney
Assistant District Attorney
Tarrant County
Justice Center
401 W. Belknap
Fort Worth, Texas 76196

OR96-2364

Dear Mr. Dohoney:

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# 102405.

The Tarrant County Criminal District Attorney (the "county") received¹ a request for

A full and complete copy of Mr. Bowlin's investigation which was conducted in response to my complaint including, but not limited to, (1) all notes made or collected in response to my complaint; (2) all statements collected in response to my complaint, whether written, recorded or videotaped; and (3) all physical exhibits collected in response to my complaint.

However, the county seeks to withhold the requested information based on sections 552.101, 552.103, and 552.107 of the Government Code. You enclosed marked representative samples of the information you seek to withhold.²

¹We note that you state the original request letter was mistakenly date-stamped for "96 Aug-2P 12:08" rather than the actual receipt date of September 10, 1996.

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The county 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 county must meet both prongs of this test for information to be excepted under section 552.103(a).

After reviewing the documents, which include both a copy of the pertinent litigation and an affidavit from an assistant criminal district attorney involved in the litigation, we conclude that the requested documents are related to the litigation. Therefore, the county may withhold the requested documents under section 552.103. We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is, in most instances, no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded.³ 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,

Janet I. Monteros
Assistant Attorney General
Open Records Division

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Ref.: ID# 102405

Enclosures: Submitted documents

³We note the presence of documents which may be confidential under other exceptions and that release of information that is otherwise confidential may subject individuals to penalties under section 552.352(a) of the Government Code. *See, Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied).