



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 9, 1997

Mr. Joe Bridges
Assistant District Attorney
Denton County Criminal District
Attorney's Office
127 N. Woodrow Lane
Denton, Texas 76205

OR97-1332

Dear Mr. Bridges:

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#106393.

The Denton County Sheriff (the "sheriff"), who you represent, received a request for mug shots of two individuals. You assert that the mugshot of one of the individuals is excepted from disclosure pursuant to section 552.108 of the Government Code, and that the other mugshot is excepted from disclosure pursuant to section 552.103 and article 42.12 of the Code of Criminal Procedure. We have considered your arguments and have reviewed the information submitted.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Because the mugshot of Ms. Joyce Pitman comes within the purview of section 552.108, we conclude that it may be withheld under this section.

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

We also note that section 552.103(b) provides that “[f]or purposes of this section, the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court.”

You argue that the subject of the additional mugshot requested is involved in deferred adjudication proceedings pursuant to art. 42.12, §5(c), Code of Criminal Procedure, and that, “[a]lthough the court has not, as a matter of course, dismissed or discharged the case against Mr. Ivy, the court has the authority to do so at any time.” Article 42.12, §5(b), Code of Criminal Procedure, provides in pertinent part:

[o]n violation of a condition of community supervision imposed under Subsection (a) of this section, the defendant may be arrested and detained as provided in Section 21 of this article. The defendant is entitled to a hearing limited to the determination by the court of whether it proceeds with a determination of guilt on the original charge. No appeal may be taken from this determination. *After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of community supervision, and defendant’s appeal continue as if the adjudication of guilt had not been deferred.*

(Emphasis added). Given that the deferred adjudication proceedings involving the subject of the mugshot have not concluded, we find that litigation is pending in this matter. However, you have not demonstrated how the information relates to the pending litigation. Therefore, we conclude that the mugshot of Mr. Kenneth Ivy may not be withheld from disclosure pursuant to section 552.103(a).

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

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Enclosures: Submitted documents

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cc: Ms. Carole A. Wingo
309 Baseline Road
Aubrey, Texas 76227
(w/o enclosures)

