



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 11, 1997

Mr. Lou Bright  
General Counsel  
Texas Alcoholic Beverage Commission  
P.O. Box 13127  
Austin, Texas 78711-3127

OR97-1788

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 107931.

The Texas Alcoholic Beverage Commission (the "commission") received a request for information relating to a particular investigation. You have released some responsive information to the requestor, including the first page of the investigator's offense report. You contend that the narrative section of the report is excepted from disclosure under section 552.103 of the Government Code because it relates to a pending prosecution for the criminal offense of selling alcoholic beverages to an intoxicated person.

The purpose of section 552.103 is to protect a governmental body's position in litigation by forcing parties to obtain information relating to the litigation through the discovery process. Open Records Decision No. 551 (1990). A governmental body that is a party to pending litigation has discretion to determine whether it should claim section 552.103 for information related to the litigation. *See id.*; Open Records Decision No. 511 (1988). You claim that the requested information is related to a pending criminal prosecution and should, therefore, be excepted from disclosure under section 552.103. However, the commission is not a party to this litigation. Consequently, the commission has no section 552.103 interest in information related to the litigation. *See* Open Records Decision No. 392 (1983).

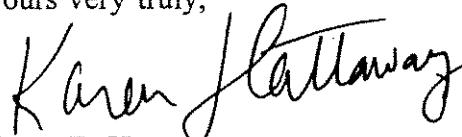
In this type of situation, we require an affirmative representation from the prosecuting attorney representing the State of Texas in the litigation that he or she wants the requested information withheld from disclosure under section 552.103. You have provided us with a letter from an Assistant District Attorney in Dallas County requesting that the commission withhold information relating to the criminal prosecution under section 552.103. Therefore, we will consider your section 552.103 claim.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show 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 narrative section of the offense report relates to the pending criminal proceedings. However, section 552.103(a) does not apply to front page offense report information. See Open Records Decision No. 362 (1983). Information normally found on the front page of an offense report, including a detailed description of the offense, is generally considered public.<sup>1</sup> *Houston Chronicle Publ'g 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); Open Records Decision No. 127 (1976). The information that you have released does not include a detailed description of the offense. Thus, you may only withhold the narrative section of the offense report from disclosure under section 552.103(a) if you make a detailed description of the offense available to the public in accordance with *Houston Chronicle*.

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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 107931

Enclosures: Submitted documents

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<sup>1</sup>The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

cc: Mr. Dan Cutrer  
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(w/o enclosures)

