



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 17, 1997

Ms. Kim Richardson  
Girouard & Richardson, P.C.  
P.O. Box 2200  
Freeport, Texas 77542-2200

OR97-2082

Dear Ms. Richardson:

On behalf of the Village of Surfside Beach, Texas, you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 108903.

The Village of Surfside Beach (the "Village") received a request for the "complete Surfside Village police report and file on any criminal investigation involving current Surfside Village Alderman Dick Martin in 1995." You assert that the requested report is excepted from required public disclosure based on section 552.103 of the Government Code.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is 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.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-

judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

You have submitted to this office a copy of Plaintiff's Original Petition and Application for Temporary Injunction in the case of *Hudson v. The Village of Surfside Beach, Texas, et al*, No. 1645\* JG97 (239<sup>th</sup> Dist. Ct., Brazoria County, Tex., filed June 24, 1997). Thus, litigation is pending. We have reviewed this submission and conclude that the Village has not established that the requested report relates to the pending litigation. Consequently, the Village may not withhold the requested report from the requestor based on section 552.103 of the Government Code.

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,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/rho

Ref.: ID# 108903

Enclosure: Submitted document

cc: Mr. Steve Scheibal  
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(w/o enclosure)