



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 9, 1998

Ms. Joni M. Vollman
Assistant General Counsel
Office of the District Attorney
Harris County
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR98-0096

Dear Ms. Vollman:

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# 112393.

The Harris County District Attorney's Office (the "district attorney") received a request for its files in two cases. You stated that the district attorney will release to the requestor certain documents. You assert that portions of the requested information are excepted from required public disclosure based on sections 552.101, 552.103, 552.108 and 552.117 of the Government Code. You have submitted a representative sample of the information at issue.¹

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

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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.

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection

(b) For 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 state that “[t]his case is currently in litigation both at the direct appeal stage (motion for rehearing required to be filed by November 21, 1997) and at the post-conviction stage.” We have reviewed the information and conclude that the district attorney may withhold it based on section 552.103 of the Government Code.²

In light of our decision under section 552.103, we need not address at this time the other exceptions you raise. 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

KHH/rho

Ref.: ID# 112393

Enclosures: Submitted documents

cc: Mr. K.S. “Gator” Dunn
P.O. Box 7571
Huntsville, Texas 77342-7571
(w/o enclosures)

²If the opposing party in the litigation has 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). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Of course, once section 552.103 is no longer applicable, the district must not release information that is confidential by law. Gov’t Code §§ 552.101, .352.