



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 16, 1998

Mr. James M. Kuboviak  
Brazos County Attorney  
300 East 26<sup>th</sup>, Suite 325  
Bryan, Texas 77803

OR98-0154

Dear Mr. Kuboviak:

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# 112573.

The Brazos County Attorney's Office received an open records request for certain records that you contend may be withheld from the public pursuant section 552.103 of the Government Code. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. In this instance you have made the requisite showing that the requested information relates to pending criminal litigation for purposes of section 552.103. The requested records may therefore be withheld.

In reaching this conclusion, however, we assume that the criminal defendant has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the criminal defendant 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.<sup>1</sup> We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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<sup>1</sup>In this regard, we additionally note that to the extent that the requested records consist of public court records, those records also may not be withheld from the requestor pursuant to section 552.103. *Cf. Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (information contained in public court records not protected by common-law privacy).

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,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/RWP/rho

Ref.: ID# 112573

Enclosures: Submitted documents

cc: Mr. Michael C.F. White  
P.O. Box 60339  
Houston, Texas 77205  
(w/o enclosures)