



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 20, 1998

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

OR98-0188

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# 112395.

The Texas Alcoholic Beverage Commission (the "commission") received a request for information relating to its investigation of a motor vehicle accident involving three fatalities. You have released some responsive information to the requestor, including the accident report. On behalf of the McLennan County District Attorney's Office (the "district attorney"), you claim that the remaining information is excepted from disclosure under section 552.103 of the Government Code because it relates to pending criminal proceedings.

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).

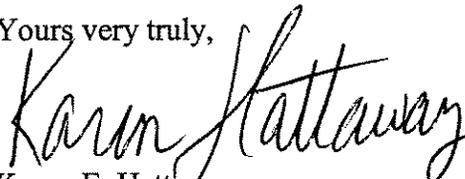
In this type of situation, we require an affirmative representation from the prosecuting attorney representing the State of Texas in the litigation that he or she wants the requested information withheld from disclosure under section 552.103. You have provided us with a letter from the district attorney requesting that the commission withhold the submitted information from disclosure 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 submitted information relates to criminal proceedings that are pending against two individuals who allegedly sold alcoholic beverages without a license. We note, however, that section 552.103(a) does not apply to front page offense report information.¹ See *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 Nos. 597 (1991), 127 (1976). Additionally, documents that have been filed with a court, such as the submitted arrest warrants, are generally considered public and must be released. See *Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992). Thus, you must release front page offense report information if you have not already done so, and you must release any documents that have been filed with a court. You may withhold the remaining information from disclosure under section 552.103(a) on behalf of the district attorney.²

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

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¹The 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*.

²We note that once all parties to litigation have gained access to the information at issue, through discovery or otherwise, section 552.103(a) is no longer applicable. Open Records Decisions Nos. 551 (1990), 454 (1986). In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Ref: ID# 112395

Enclosures: Submitted documents

cc: Ms. Sharon S. Davenport
Adjuster
John T. Parker Claims Service
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(w/o enclosures)