



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 26, 1998

Mr. Scott A. Durfee
General Counsel
Office of the Harris County District Attorney
District Attorney's Building
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR98-0256

Dear Mr. Durfee:

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# 112054.

The Harris County District Attorney (the "district attorney") received a request for "files and records regarding (1) Nanon McKewn Williams, (2) Vaal Solomon Guevara, (3) Elaine Marie Winn, (4) Emmade Mohamed Rasul, Adonius Collier, and (6) any other individuals connected to the investigation and prosecution of the murder of Adonius Collier." You state that you will provide certain documents to the requestor. You claim, however, that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note that you have submitted for our review records pertaining to Williams and Guevara. You state that the district attorney has no additional records responsive to this request. As chapter 552 of the Government Code applies only to information in existence, you need not respond to the request for records pertaining to the other named individuals. *See* Open Records Decision Nos. 605 (1992), 572 (1990), 430 (1985).

You contend that section 552.103 protects all of the information submitted to this office for review. Section 552.103(a) applies to information:

¹We note that you submitted a "representative sample" of the information pertaining to juror questionnaires. 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). 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.

(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.

Additionally, section 552.103(b) provides that the state or a political subdivision is considered to be a party to litigation of a criminal nature until the defendant has exhausted all post-conviction remedies in state and federal court.

The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a 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, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 (1989) at 5. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. You state that Nanon Williams was convicted of capital murder, and that you anticipate "[f]urther proceedings in state and federal court seeking habeas corpus relief." In this instance, you have made the requisite showing that the requested information relates to an anticipated post-conviction writ of habeas corpus for purposes of section 552.103(a).

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the criminal defendant or any of his prior attorneys in this or related criminal litigation, including litigation relating to his co-defendant, is not excepted from disclosure under section 552.103(a), and must be disclosed unless otherwise excepted from public disclosure. See Gov't Code § 552.101, Open Records Decision No. 597 (1991). Moreover, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).²

²As we resolve this matter under section 552.103, we need not address your claimed exception under section 552.101. We caution, however, that some of the information may be confidential by law. Therefore, if the district attorney receives a request in the future, at a time when litigation is no longer reasonably anticipated or pending, the district attorney should seek a ruling from this office on the applicability of this

Because section 552.103 may not protect some of the information in Exhibits A, C, and E, we will specifically address your claim that these documents are excepted from disclosure as "attorney work product" under section 552.108. Section 552.108(a)(3) provides that information is excepted from public disclosure under the Open Records Act if it is information that is either (A) prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or (B) if it is information that reflects the mental impressions or legal reasoning of an attorney representing the state.

In this instance, you specifically quote the pertinent language from the provision cited above in arguing that these records constitute the work product of the prosecutors for the district attorney. We have reviewed the documents in Exhibits A, C, and E. We find that these records deal with the prosecution of crime and reflect the mental impressions or legal reasoning of an attorney representing the state. *See* Gov't Code § 552.108(a)(3)(B). You may, therefore, withhold from disclosure the documents contained in Exhibits A, C, and E under section 552.108(a)(3). We note, however, that "front page" information is not protected from required public disclosure pursuant to section 552.108(c) ("basic information about an arrested person, an arrest, or a crime" not excepted from required public disclosure).³

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

exception before releasing any of the requested information. *See* Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).

³Basic information is the type of information that is considered to be front page offense report information even if this information that is considered to be front page offense report information is not actually located on the front page of the offense report. *See generally 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) (summarizing types of information considered to be basic information).

VDP/glg

Ref.: ID# 112054

Enclosures: Submitted documents

cc: Ms. Helen J. Beardsley
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(w/o enclosures)