



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 25, 1998

Mr. John Julian Moore
Colorado County Attorney
2nd Floor, West
Colorado County Courthouse
Columbus, Texas 78934

OR98-0537

Dear Mr. Moore:

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# 113402.

The Colorado County Judge, Sheriff, Attorney and Treasurer received two requests for a voluminous amount of information. You state that portions of the requested information do not exist. You also state that portions of the requested information are in the possession of other elected county officers. You assert that the remaining information requested is protected from disclosure by "the litigation exception."

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 suggest that you expect that you, a justice of the peace, the county and all the county commissioners will be sued and that this expected action is imminent. Section 552.103 requires concrete evidence that the claim that litigation may ensue is more than mere conjecture. Open Records Decision No. 518 (1989). A mere threat to sue is not sufficient to establish that litigation is reasonably anticipated. *See* Open Records Decision No. 331 (1982). There must be some objective indication that the potential party intends to follow through with the threat. *See* Open Records Decision No. 452 (1986) at 5. On the other hand, several threats to sue and the hiring of an attorney for the purpose of carrying out the threat is evidence that litigation is reasonably anticipated against a governmental body. *See* Open Records Decision No. 288 (1981).

We conclude that you have not established that litigation is reasonably anticipated in this case. Accordingly, the county may not withhold the requested information from the requestor based on section 552.103 of the Government Code.

We note that the submitted information includes criminal history records information. Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history information which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to criminal history information it generates. *Id.* Section 411.083 of the Government Code deems confidential criminal history records that the Texas Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain criminal history record information; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Other entities specified in Chapter 411 of the Government are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any criminal history record information generated by the federal government or

another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any criminal history record information obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.

We also note that the submitted information contains driver's license numbers. Section 552.130 of the Government Code provides as follows

- (a) Information is excepted from [required public disclosure] if the information relates to:
 - (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
 - (2) a motor vehicle title or registration issued by an agency of this state; or
 - (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.
- (b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Thus, the driver's license numbers may not be released.

Your request raises additional questions about the duty of the county officers who received the request. The act does not require the officers to produce information in the possession of another elected county officer. *See* Gov't Code § 552.201(b); *see also id.* § 552.301 (written request includes request by facsimile transmission sent to officer for public information or officer's designee). Further, the act does not require the officers to

allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

Id. § 552.027(a). Additionally, section 552.222(b) provides that if a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of the request might be narrowed. Finally, the act applies only to information already in existence and does not require a governmental body to prepare new information in response to a request. Open Records Decision No. 452 (1986).

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# 113402

Enclosures: Submitted documents

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(w/o enclosures)