



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 19, 1998

Mr. Steve Sparks
Assistant District Attorney
Tarrant County Justice Center
401 W. Belknap Street
Fort Worth, Texas 76196-0201

OR98-1234

Dear Mr. Sparks:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114961.

The Tarrant County District Attorney's Office received a request for "all files, writings, computer files, notations, or any other writings in your office's possession concerning the trial or trials of Cedric Lamont Ransom." The requestor is Mr. Ransom's attorney. You assert that the documents at issue are protected from disclosure under sections 552.101 and 552.103 of the Government Code.¹ A representative sample of the documents at issue were submitted to this office for review.²

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the 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 request letter indicates that the information is sought for the purpose of filing a writ of habeas corpus.

¹We note that you timely raised sections 552.101 and 552.103 as exceptions to disclosure. We note that exceptions to disclosure must be raised by a governmental body within ten business days of receipt of the public records request, or the information is presumed to be public. Gov't Code § 552.301, .302. You raised section 552.111 as an exception to disclosure more than ten business days after receipt of the public records request. Section 552.111 is waived if not timely raised. Open Records Decision No. 470 (1987) at 2-3. Thus, we do not address your section 552.111 argument.

²We 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 No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office

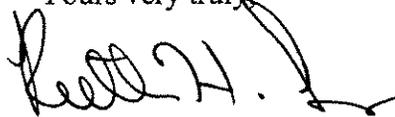
Univ. of Texas Law School v. Texas Legal Found., 958 S.W.2d 479 (Tex.App.--Austin, 1997). You submitted an affidavit from the chief of the district attorney's appellate division stating that, based upon his experience and knowledge of the case, litigation involving the state is reasonably anticipated. We agree that you have shown that litigation is reasonably anticipated.

We have reviewed the documents at issue and agree that they are related to the litigation. We note, however, that some documents at issue are public and must be disclosed. Records that have been filed with a court, including affidavits, are generally public and may not be withheld. *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Section 11 of article 49.25 of the Texas Code of Criminal Procedure provides that an autopsy report, including the full report and detailed findings of an autopsy, is a public record. See Open Records Decision No. 529 (1989) at 4. Also, a probable cause affidavit to support a search warrant is public by statute once the warrant has been executed. See Code Crim. Proc. art. 18.01(b).

Please note 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, and that information must be released. Open Records Decision Nos. 349 (1982), 320 (1982). You may withhold the other documents at issue from disclosure under section 552.103 of the Government Code.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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 114961

Enclosures: Submitted documents

³Because the records at issue may generally be withheld from disclosure under section 552.103(a), we need not address your section 552.101 argument at this time.

cc: Mr. Bill Loveless
Attorney at Law
419 South Carroll
Suite 2A
Denton, Texas 76201
(w/o enclosures)