



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 17, 1998

Ms. Joni M. Vollman
Assistant General Counsel
Office of the District Attorney
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR98-2216

Dear Ms. Vollman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118129.

The Harris County District Attorney's Office (the "district attorney") received two requests for certain files relating to Richard Head Williams and Kareem Jabbar Wilson. You state that you will release the front page of the offense report containing basic arrest information to the requestor.¹ You contend that the remaining requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed a representative sample of the information at issue.²

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement

¹We note that section 552.103 generally may not be invoked to except front page offense report information from disclosure. *See* Open Records Decision No. 597 (1991).

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 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.

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 at 4 (1990). Therefore, the governmental body must meet both prongs of this test for information to be excepted under 552.103(a). You inform us that the state's cases against Richard Head Walker and Kareem Jabbar Wilson "are currently in litigation at the direct appeal stage." Most of the submitted documents relate to the pending litigation and, therefore, may be withheld from disclosure under section 552.103(a).

We note, however, that the documents we have marked with red tags do not appear to relate to the pending litigation. You have not explained how these documents relate to the litigation, and, therefore, we conclude that these documents may not be withheld from disclosure under section 552.103(a).³

Finally, we note that 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 defendants or their attorneys is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, 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).

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

³If the documents marked with red tags were inadvertently submitted to this office and are not responsive to the pending requests, then the district attorney is not required to release them to the requestor.

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 "Karen Hattaway". The signature is written in a cursive style with a large, looped "K" and "H".

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/mjc

Ref: ID# 118129

Enclosures: Submitted documents

cc: Mr. Clarence Walker
P.O. Box 21453
Houston, Texas 77226
(w/o enclosures)