



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 23, 1998

Ms. E. Cary Grace
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR98-2474

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118987.

The City of Houston Police Department received requests for documents and photographs in the department's accident investigation file for a particular accident. The requestor specified the time and location of the accident in question, and individuals involved. You seek to withhold the requested information under sections 552.103 and 552.108 of the Government Code.

Section 552.103(a), the "litigation exception," excepts from required public disclosure 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.

You advise that the grand jury has issued an indictment against one of the drivers in the accident to which the requested information pertains and that a trial has been scheduled. You submit the affidavit of an assistant district attorney confirming the pendency of litigation and that the requested information relates to such litigation.

We have reviewed the information you submitted and your arguments for withholding it. We note that the information includes what appears to be a specimen analysis subject to section 724.018 of the Transportation Code. Section 724.018 provides that "full information concerning the analysis shall be made available to the person or the person's

attorney.” Information made public by statute may not be withheld under the Open Records Act. Open Records Decision No. 623 (1994). As the requestor here is the attorney for the person who gave the specimen(s), we believe that the specimen analysis should be released to her under section 724.018. We have tagged the specimen analysis documents in question.

We have also tagged what appears to be a court record. Presumably this is a public record, which must be released to the requestor. Section 552.103(a) does not authorize the governmental body to withhold materials which have already been made available to the public. Open Records Decision No. 436 at 7 (1986). *See also Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992). Similarly, “first page” offense report information of the kind specifically made public by *Houston Chronicle Publishing Company 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), must be released. *See* Open Records Decision No. 597 (1991) (litigation exception generally does not protect “basic information”).¹

Subject to these provisions, you may withhold the requested information at this time under section 552.103.² As we have resolved this request under section 552.103, we do not address your section 552.108 claim except to note that “basic information” and information made public by other statutes may not be withheld under section 552.108 either. *See* Gov’t Code § 552.108(c); Open Records Decision No. 623 (1994).

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,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

¹We assume that none of the other information in the records at issue has previously been made available to the defendant in the litigation. Absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). To the extent the defendant has seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a).

²Please note that 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# 118987

Enclosures: Marked documents

cc: Ms. Laura Steelman
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(w/o enclosures)