



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 26, 1998

Ms. Marva M. Gay  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002-1700

OR98-2494

Dear Ms. Gay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 119006

The Harris County Constable, Precinct Four, received a written request for information concerning case number 98 0702003. You state that the requested information relates to a pending criminal case, Cause Number 98-26554 in Harris County Criminal Court No. 11. You assert that the requested information is excepted from required public disclosure based on section 552.103 of the Government Code.

We have considered the exception you claim and have reviewed the documents at issue. When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation.<sup>1</sup> Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation to which the governmental body is a party is either pending or reasonably anticipated, and that (2) the requested information relates to that litigation. *See 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). In this instance, Harris County is a party to the litigation, litigation is pending, and you have established that the

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<sup>1</sup>Section 552.103(a) 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

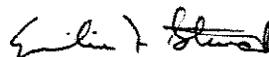
(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

requested information relates to that litigation. Therefore, at this time you may withhold the requested information.

In reaching this conclusion, however, we assume that the opposing party to the pending litigation has not previously had access to the records at issue; absent special circumstances, 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). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a).<sup>2</sup>We also note that 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 determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Emilie F. Stewart  
Assistant Attorney General  
Open Records Division

EFS\nc

Ref: ID# 119006

Enclosures: Submitted documents

cc: Mr. Jim Tilton  
5414 Pinewilde Drive  
Houston, Texas 77006  
(w/o enclosures)

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<sup>2</sup>Open Records Decision No. 597 (1991) (concluding that statutory predecessor to section 552.103 does not except basic information in offense report that was previously disclosed to defendant in criminal litigation) see Open Records Decision Nos. 551 at 4 (1990), 511 at 5 (1988), 493 at 2 (1988), 349 (1982), 320 (1982).