



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 7, 1998

Ms. Kristi LaRoe
Assistant District Attorney
County of Tarrant
Justice Center
401 W. Belknap
Fort Worth, Texas 76196-0201

OR98-2966

Dear Ms. LaRoe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120179.

The Tarrant County District Attorney's Office received a request for a video tape relating to a pending criminal case. You contend that the tape is excepted from disclosure pursuant to sections 552.101 and 552.103 of the Government Code.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *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). You have demonstrated that the requested video tape relates to a pending criminal case currently being prosecuted by a Tarrant County Assistant District Attorney. Under these circumstances, we conclude that you may withhold the videotape from disclosure pursuant to section 552.103(a).

We note that once all parties to litigation have gained access to the information at issue, through discovery or otherwise, section 552.103(a) is no longer applicable to the information. Open Records Decisions Nos. 551 (1990), 454 (1986). Further, once the litigation has concluded, section 552.103(a) is no longer applicable. Open Records Decision No. 350 (1982). Of course, you may choose information that is not otherwise confidential by law. See Gov't Code § 552.007.

Because we are able to resolve this matter under section 552.103, we do not address your section 552.101 arguments. 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,

A handwritten signature in black ink that reads "Karen Hattaway". The signature is written in a cursive style with a long, sweeping underline.

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/mjc

Ref: ID# 120179

Enclosure: Submitted videotape

cc: Mr. Mark D. Frenkel
Frenkel & Frenkel, P.C.
5445 La Sierra Drive, Suite 100
Dallas Texas 75231
(w/o enclosure)