



August 16, 2000

Ms. Kristi LaRoe
Assistant District Attorney
Office of Criminal District Attorney
Tarrant County
401 West Belknap
Fort Worth, Texas 76196-0201

OR2000-3124

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# 138225.

The Tarrant County Sheriff's Department (the "department") received a request for a copy of all warrants issued and served at a specified time and place; the names of the officers involved in a specified search; the incident report of the specified search; the results of the search; and the results of other searches in a specified area during a specified period. You have submitted an arrest warrant and other responsive information to this office for review. The submitted information does not include the requested incident report. This report must therefore be released. Gov't Code §§ 552.301, 552.302. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The governmental body claiming this exception 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. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (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). Further, to be excepted under section 552.103, the information must relate to litigation that is pending or reasonably anticipated on the date that the information was requested. Gov't Code § 552.103(c).

This office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and where a potential party threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981). You have supplied a copy of a letter from an attorney who represents individuals who he alleges sustained damages as a result of the subject search. The letter asserts claims for these damages under Chapter 1 of the Civil Practices and Remedy Code, the Texas Tort Claims Act. The request for information is also contained in this letter.

We conclude that you have demonstrated that litigation in this matter was reasonably anticipated on the date that the request was received. We have reviewed the submitted information and conclude that it relates to this anticipated litigation. We conclude that information responsive to this request may be withheld pursuant to Government Code section 552.103. However, the litigation exception does not except all of the subject information from disclosure.

Even where litigation is reasonably anticipated, basic factual information about a crime must be released. Open Records Decision No. 362 (1983). Information normally found on the front page of an offense report is generally considered public, and must be released. *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.); *see* Open Records Decision No. 127 (1976). In Open Records Decision No. 127 this office summarized the types of information considered to be "front page" information to include a detailed description of the offense, time and location of the crime, identity of persons arrested, identity of the complainant, and identity of the investigating officers. This, "front page" information is specifically made public and must be released even if it is not actually located on the front page of a report. Further, information filed with the court is public and must be released. Gov't Code § 552.022(a)(17); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992). Other than "front page" information and information filed with the court, the department may withhold the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 138225

Encl Submitted documents

cc: Ms. Bobbie Edmonds
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(w/o enclosures)