



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 31, 1994

Ms. Laura S. Portwood  
Senior Assistant City Attorney  
City of Houston  
Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR94-154

Dear Ms. Portwood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code.<sup>1</sup> We assigned your request ID# 23085.

The City of Houston (the "city"), through its police department, has received a request for certain offense reports. Specifically, the requestor seeks "[a]ll offense reports in which Rachel Tovar, 9/24/58, is a witness, complainant or suspect . . . includ[ing] the following offense reports:

incident # 041895989  
045546588  
037231192  
025555791  
088774988  
067138392  
057317290  
000267890  
066563392"

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<sup>1</sup>The Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

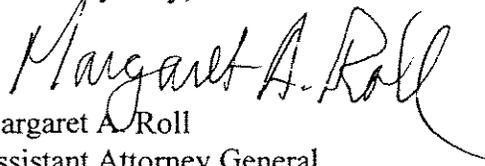
In addition, the requestor seeks a "'location report,' meaning a general listing of all offenses reported in the 4600 block of Brownstone from 1/1/91 until the present." You advise us that the city has made available to the requestor the requested "location report" and the information generally found on the first page of the offense reports that is specifically made public in *Houston Chronicle Publishing Co. 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). However, you seek to withhold the remaining information contained in the offense reports, which you have submitted to us for review, and claim that sections 552.103 and 552.108 except it from required public disclosure.

Section 552.103(a) excepts from required public disclosure information "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." To secure the protection of section 552.103(a), a governmental body must demonstrate that a judicial or quasi-judicial proceeding in which it is or will be involved is pending or reasonably anticipated. Open Records Decision Nos. 555 (1990) at 2; 392 (1983) at 3. A governmental body must also demonstrate that the requested information relates to that litigation. Open Records Decision No. 555 at 2. Whether the requested information relates to the litigation must be determined on a case-by-case basis. See Open Records Decision No. 551 (1990) at 5. However, information cannot be withheld under section 552.103(a) after it has been released to the party in litigation against the governmental body. Open Records Decision No. 525 (1989) at 4.

We conclude that you may withhold the offense reports you submitted for review under section 552.103(a) providing that the court has not already ordered that they be produced. You indicate that the offense reports at issue in this request are the subject of a subpoena *duces tecum* in a prosecution for capital murder. You have also provided us with a copy of the city's motion to quash or modify the subpoena. We believe that the subpoena and the city's motion regarding the subpoena demonstrate that the city is involved in pending litigation and that the requested information relates to that litigation. Because we resolve this matter under section 552.103(a), we will not address your arguments under section 552.108.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

MAR/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 23085  
ID# 23169

cc: Mr. Tom Moran  
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(w/o enclosures)