



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 31, 1994

Ms. Ann Diamond
Criminal District Attorney
Tarrant County
Justice Center
401 W. Belknap
Fort Worth, Texas 76196-0201

OR94-231

Dear Ms. Diamond:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.¹). Your request was assigned ID# 22561.

Tarrant County (the "county") received an open records request for certain records relating to the investigation and information on the death of a certain inmate while in custody. The county contends this information may be withheld from the public pursuant to the Open Records Act (the "act"), sections 552.101, 552.103(a), and 552.108 of the Government Code (former sections 3(a)(1), 3(a)(3), and 3(a)(8), V.T.C.S. article 6252-17a). The county has submitted the responsive information for our review.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance, you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). The requested records may therefore be withheld.

¹We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46.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 reaching this conclusion, however, we assume that the opposing party to the anticipated 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, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 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). 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).²

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 our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/JCH/rho

Ref.: ID# 22561

Enclosures: Submitted documents

cc: Mr. Paul Snell
1300 Summit, Suite 512
Fort Worth, Texas 76102
(w/o enclosures)

²Since section 552.103 resolves your request, it is not necessary to address your arguments under sections 552.101 and 552.108 of the act.