



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 25, 1994

Mr. James Eidson  
Criminal District Attorney  
Taylor County Courthouse  
Abilene, Texas 79602-1577

OR94-402

Dear Mr. Eidson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 26210.

The Taylor County Criminal District Attorney's Office (the "district attorney") received an open records request for information concerning a capital murder prosecution, *State of Texas v. John Glenn Moody*, in which the accused received the death penalty. A Writ of Habeas Corpus is now pending. You claim the requested information is exempted from required public disclosure under sections 552.103(a) and 552.108 of the Government Code.<sup>1</sup>

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 pending litigation for purposes of section 552.103(a).

However, 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 litigation have seen or had access to any of the information in these records, there would

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<sup>1</sup>We note that you state that "the 'front page' basic information sheet, the front page offense report, the indictment, copies of all motions and pleadings filed by either side, juror information sheets, as well as post-trial pleadings and appeal-related documents" have been made available to the requestor.

be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Furthermore, the Open Records Act does not permit a governmental body to withhold information expressly made public by another statute. *See* Open Records Decision No. 613 (1993) at 4. Therefore, you may not withhold under section 552.103(a) any information expressly made public by another statute.

We have reviewed the information submitted for our consideration. One of the documents, which we have marked, demonstrates on its face that the opposing party has had access to it. You may not withhold this document from the requestor.<sup>2</sup> Furthermore, section 11 of article 49.25, Code of Criminal Procedure, expressly makes autopsy reports public information. Therefore, you may not withhold under either section 552.103(a) or section 552.108(a) the autopsy report contained among the documents you submitted for review. *See* Open Records Decision No. 529 (1989) at 4. Except as noted above, the remaining information may be withheld under section 552.103(a) of the Government Code.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an 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/LBC/rho

Ref.: ID# 26210

Enclosures: Submitted documents

cc: Mr. Ken Driggs  
Staff Attorney  
Texas Resource Center  
1206 San Antonio  
Austin, Texas 78701  
(w/o enclosures)

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<sup>2</sup>The document at issue contains a list of the personal property obtained from the prisoner and then released to a family member. We do not believe the release of such information would unduly interfere with law enforcement or crime prevention. Accordingly, you may not withhold this document under section 552.108 of the Government Code either.

Ms. Andrea March  
Assistant Attorney General  
Criminal Law Degree  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548  
(w/o enclosures)