



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 30, 1995

Ms. Diane Wetherbee
Assistant City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR95-023

Dear Ms. Wetherbee:

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# 29400.

The City of Plano (the "city") received a request for twenty items of information pertaining to the death of Scott Lee Mathus and seeks to withhold from required public disclosure item nos. 13, 14, and 20, which read as follows:

13. All death to prisoner reports filed or made for the period January 1, 1994, through the present.
14. All in custody death reports filed or made for the period January 1, 1994, through the present.
20. All documents reflecting any statements made by anyone concerning the hanging or death of Scott Lee [Mathus.]

You assert that the city may withhold these items of information from required public disclosure based on sections 552.103 and 552.108 of the Government Code. Section 552.103(a) applies to information

(1) 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 or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

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 quasijudicial proceeding. Open Records Decision No. 588 (1991). You enclosed several claims for damages against the city for injuries resulting from the death of Mr. Mathus. We conclude that you have established that litigation is reasonably anticipated in this case. Furthermore, the information you enclosed as responsive to the request relates to the anticipated litigation. We, therefore, conclude that the city may withhold the information based on section 552.103 of the Government Code, but with the exceptions explained below.¹

Information specifically made public by statute may not be withheld from the public pursuant to a discretionary exception to disclosure in the Open Records Act. Open Records Decision No. 161 (1977) at 2. The information you enclosed contains two types of information that are made public by statute.

First, the information includes a custodial death report filed with the attorney general. Article 49.18(b) of the Texas Code of Criminal Procedure requires the director of the city's jail to prepare and file a report with the attorney general about prisoners who die while in custody. That provision also states that:

[T]he attorney general shall make the report, with the exception of any portion of the report that the attorney general determines is privileged, available to any interested person.

¹We note that 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). Open Records Decision Nos. 349, 320 (1982). 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). However, the report contains some information about an individual that is protected from required public disclosure based on the common-law right to privacy. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 343 (1982). Thus, this information must be withheld even after section 552.103 no longer applies. We have marked the documents accordingly.

Under article 49.18(b), in conjunction with a directive issued by the Office of the Attorney General, section one of custodial death reports filed with the attorney general is public information. *See* Open Records Decision No. 521 (1989) at 5.

Second, the enclosed records include an autopsy report of the Collin County Medical Examiner. This report is public information pursuant to article 49.25 of the Code of Criminal Procedure. *See* Open Records Decision No. 521, at 7. Thus, the city must also release the autopsy report.

We are resolving this matter with this 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 may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 29400

Enclosures: Marked documents

cc: Mr. Frank D. Chandler
Law Offices of Michael F. Linz
400 Katy Building
701 Commerce Street
Dallas, Texas 75202-4518
(w/o enclosures)