



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 28, 1995

Mr. David M. Douglas
Assistant Chief
Legal Services
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR95-543

Dear Mr. Douglas:

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# 31936.

The Texas Department of Public Safety (the "department") received a request for copies of documents relating to the arrest of two persons on a particular date. You contend that the requested information may be withheld from the public pursuant to the Open Records Act, section 552.103(a) of the Government Code. Section 552.103(a) exempts 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.

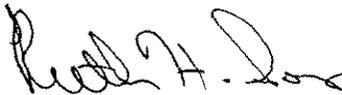
To be excepted under section 552.103(a), information must relate to litigation that is pending or reasonably anticipated. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. To secure the protection of section 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).

You inform our office that the Gaines County District Attorney has filed suit for forfeiture of an automobile and funds seized during the arrest. The Gaines County District Attorney has also asked that the information at issue not be released.¹ Our review of the information at issue indicates it is related to the pending forfeiture lawsuit. Thus, in this instance, you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). The requested records may therefore be withheld.²

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. We note that some of the records submitted to this office, such as statements by the individuals who were arrested, may have already been seen by the opposing party in the forfeiture suit. Absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). You may withhold from disclosure the records that have not been disclosed to the opposing parties. 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).

We are resolving this matter with an 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 should 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,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/LMM/rho

¹The information provided to this office indicates that the proceeding is brought by the Gaines County District Attorney pursuant to agreement with the department.

²We assume that you provided us with a copy of the petition in the pending litigation for the purpose of substantiating your litigation claim. However, if the petition itself was provided for our review as responsive to this request, it must be released. This document has clearly been filed in the District Court of Gaines County, Texas. Texas courts have recognized a common-law right of the public to copy and inspect records of the judiciary. See *Davenport v. Garcia*, 834 S.W.2d 4, 24 (Tex. 1992); Attorney General Opinions DM-166 (1992) (historical perspective of right of public access to records of the judiciary).

Ref.: ID# 31936

Enclosures: Submitted documents

cc: Mr. Carlos Spector
Spector & Spector
1401 E. Yandell
El Paso, Texas 79902
(w/o enclosures)