



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 28, 1995

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR95-897

Dear Ms. Calabrese:

You have asked 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# 34902.

The City of Houston (the "city") received a request for photographs and other information relating to the police department's investigation of a murder. You state that the individual convicted of the murder has "failed to exhaust all post-conviction remedies" and could seek a writ of habeas corpus. The city contends that the requested information, which was submitted to this office for review, is excepted from disclosure under section 552.103 of the Government Code.

Section 552.103(a) provides an exception for information relating to litigation to which the governmental body is a party. Open Records Decision No. 551 (1990). Our review of the information shows that it is related to the litigation. Generally, though, the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 (1982) at 2. However, section 552.103(b) provides that:

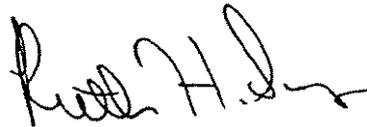
the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court.

Therefore, you have shown the applicability of section 552.103 to the requested information.

However, the city may not withhold all of the requested information under section 552.103. Information submitted to this office contains first page offense report information, which must be released to this requestor since this basic information was made available to the requestor during the criminal litigation.¹ Open Records Decision No. 597 (1991). Further, we note that some of the other information at issue was likely made available to the defendant during the criminal litigation. Once a criminal defendant has had access to these records, no section 552.103 interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. The other information at issue may be withheld from disclosure.

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/rho

Ref.: ID# 34902

Enclosures: Submitted documents

cc: Ms. Margie Jones
5410 Bataan
Houston, Texas 77033
(w/o enclosures)

¹We note that the location of first page offense report information is not determinative of its status. *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). This information must be released wherever it is found.