



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 19, 1995

Ms. Vicki Lane
Records Supervisor
Collin County Sheriff's Office
4300 Community Boulevard
McKinney, Texas 75070

OR95-1470

Dear Ms. Lane:

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# 32235.

The Collin County Sheriff's Office (the "sheriff's office") received a request for all documents relating to the arrests of Robert V. Thurmond, Jr. and Bobby Ray Edwards for driving while intoxicated. You claim that the requested information is excepted from disclosure because it "relates to pending litigation." We assume that you intended to invoke the protection of section 552.103 of the Government Code. We have considered this exception and have reviewed the documents at issue.

Section 552.103(a) excepts from disclosure 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.

The sheriff's office has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston*

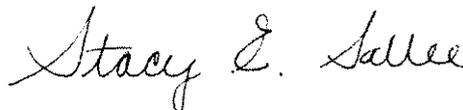
Post Co., 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The sheriff's office must meet both prongs of this test for information to be excepted under 552.103(a). See Open Records Decision No. 511 (1988) at 3 (review of litigation exception by attorney general).

Despite the fact that this office requested additional information from the sheriff's office, specifically, your arguments for withholding these documents from public disclosure, you did not submit this requested information. The sheriff's office has not established that the requested information relates to pending or reasonably anticipated litigation. The sheriff's office has consequently not met its burden of showing the applicability of section 552.103(a) to the requested information. Therefore, we conclude that section 552.103(a) does not except the requested documents from disclosure.

However, it does appear that some of the information contained in the submitted documents is excepted from disclosure by section 552.101. Although you did not raise section 552.101 as an exception, the Office of the Attorney General will raise section 552.101 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). A privacy right excepts the kind of prescription drugs a person is taking. Open Records Decision No. 455 (1987) at 5. Therefore, you must withhold this information. Additionally, federal law may prohibit the disclosure of the individuals' social security numbers.¹ We note that the results of any breath tests performed on these individuals must be disclosed to the individuals or their attorney. V.T.C.S. art. 67011-5, § 3(e). As the requestor is the attorney for the men who were arrested, you may not withhold that information.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

¹A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994). Based on the information you have provided, we are unable to determine whether the social security numbers are confidential under this federal statute. We note, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information.

SES/rho

Ref.: ID# 32235

Enclosures: Submitted documents

cc: Mr. Paul G. Stuckle
Attorney at Law
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(w/o enclosures)