



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 20, 1996

Ms. Elizabeth A. Lunday
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR96-0363

Dear Ms. Lunday:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37727.

The City of Mesquite (the "city") received a request for "all surveillance video of the city jail area which housed prisoner Misty Hickey on 11/12/95 through 11/13/95." Ms. Hickey was found unconscious in her cell and later died. You state that videotape surveillance cameras are not located in the actual area where Ms. Hickey was housed, but that the city has videotapes of another portion of the jail. You contend that these videotapes are excepted from disclosure pursuant to sections 552.103(a) of the Government Code.

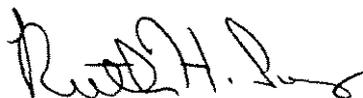
To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex.App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have submitted to this office information that indicates litigation over the death of Ms. Hickey is reasonably anticipated.

You also assert that the videotapes at issue are related to the litigation. The information provided indicates that Ms. Hickey's family has alleged that she may have been beaten in her jail cell or denied needed medical treatment. You explain that the videotapes may show, among other things, who entered or left the area where Ms. Hickey was housed, and police activities and procedures during the period when Ms. Hickey was incarcerated. Our review of the videotapes indicates they are related to the litigation.

Since you have shown that the videotapes at issue are related to reasonably anticipated litigation, they may be withheld from disclosure pursuant to section 552.103(a).¹ We note, however, that generally there is no section 552.103(a) interest once all parties to anticipated litigation have had access to or seen the information at issue or when the litigation has concluded. Open Records Decision Nos. 349 (1982), 320 (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 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 Records Division

RHS/ch

Ref.: ID# 37727

Enclosures: Submitted videotapes

cc: Ms. Maria Barrs, Managing Editor
KDFW-TV \ KDFI-TV
400 N. Griffin Street
Dallas, Texas 75202
(w/o enclosures)

¹Because you may withhold the videotapes pursuant to section 552.103(a), we need not address at this time your other arguments against disclosure. We note, however, that while section 552.119(a) of the Government Code generally prohibits public release of photographs of police officers, section 552.119(a) also provides an exception for photographs introduced as evidence in a judicial proceeding. Thus, provisions of section 552.119(a) will determine whether portions of the videotapes showing police officers may be disclosed once the litigation concludes.