



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 28, 1996

Mr. Tom O'Connell
Collin County Criminal District Attorney
210 South McDonald, Suite 324
McKinney, Texas 75069

OR96-0812

Dear Mr. O'Connell:

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# 26704.

The Collin County Criminal District Attorney's Office received a request for information relating to a crime for which the defendant was convicted. You indicate that the defendant is currently serving a sentence in the Texas Department of Criminal Justice, Institutional Division, but has not yet exhausted his appellate or other post conviction remedies. You contend that the requested information may be withheld from public disclosure under section 552.103.

Section 552.103(a) of the Government Code excepts from required public 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.

To secure the protection of section 552.103(a), a governmental body must demonstrate that litigation is pending or reasonably anticipated and that the requested information relates to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 5. However, information cannot be withheld under section 552.103 if the opposing party in the litigation has previously had access to it; 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). Furthermore, if the requested records include an offense report, the information generally found on the first page of an offense report cannot be withheld under section 552.103(a) after the suspect has been informed of the charges. Open Records Decision No. 597 (1991) at 3. Section 552.103(b) defines when a governmental body is considered a party to criminal litigation. It provides as follows:

For purposes of this section, 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.

In this case, you have established that a governmental body is a party to pending litigation. However, section 552.103 does not except from disclosure all of the information you submitted for review. We conclude that two documents must be released because they are normally public and only relate indirectly to the litigation. See Open Records Decision No. 143 (1976) at 4. In addition, the suspect has been informed of the charges against him. Therefore, you must release the information generally found on the first page of an offense report.¹ Furthermore, the opposing party has clearly had access to some of the records, and thus, these records may not be withheld under section 552.103.²

¹We note that the location of the information is not determinative of its status. The information identified by the court in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976), as information generally found on the first page of the offense report must be released regardless of where it is found. See Open Records Decision No. 127 (1976) at 5. Therefore, to determine what information must be released, you will need to examine the type of information rather than its location. We have enclosed an excerpt from Open Records Decision No. 127 (1976), which lists the types of information that are considered public and which must be disclosed.

²We assume that the opposing party has had access to his indictment and the motions and court orders made during the proceedings against him; this information not only should have been provided to the defendant or his attorney during the proceedings but also is available from the court file. We also note that information in the possession of the criminal district attorney's office is subject to this request even though the information is also held in court files and, indeed, even if it was originally generated by the court.

We have marked this information accordingly. You may withhold the remaining information under section 552.103 provided that the opposing party has not already had access to it.

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,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 26704

Enclosures: Marked documents
Excerpt from Open Records Decision No. 127 (1976)

cc: Mr. Burke Allen Weber
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(w/o enclosures)