



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 17, 1996

Ms. Katheryn H. West  
Assistant City Attorney  
City Hall  
Dallas, Texas 75201

OR96-0968

Dear Ms. West:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39943.

The Dallas Police Department (the "department") received a request for information seeking photographs and updated reports in connection with a pedestrian and motor vehicle accident. You claim that the requested information is excepted from required public disclosure under section 552.103 of the Government Code. You have submitted the requested documents to this office for review.

Pursuant to section 552.303(c) of the Government Code, this office notified you by facsimile dated May 1, 1996 that we required additional, specific information necessary to render a decision. We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e) failure to comply would result in the legal presumption that the information at issue was presumed public.

We believe that the additional information requested from you was necessary to render a decision because of our analysis under your stated exception to disclosure. 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 governmental body 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 governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you stated that the department and the Dallas County District Attorney's Office are currently investigating the accident because it was a hit-and-run. You also state that the suspect in the case is still at-large. You assert that the suspect when found will, in all likelihood, be prosecuted on several charges. However, absent a letter or other documentation from the District Attorney's Office or the prosecuting attorney with the litigation interest stating that the information should not be released, we conclude that you have not met your section 552.103 burden. *See* Open Records Decision No. 469 (1987) at 2. From the submitted documentation, the City of Dallas has not shown that it has a litigation interest. Therefore, the requested documents may not be withheld pursuant to section 552.103.

Moreover, you have not provided our office with the additional information that was requested by our office. Therefore, as provided by section 552.303(e), the information that is the subject of this request for information is presumed to be public information. Information that is presumed public must be released unless a governmental body demonstrates a compelling interest to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. Open Records Decision No. 195 (1978). *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense).

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,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref.: ID# 39943

Enclosures: Submitted documents

cc: Ms. Geraldine Lewis  
Route 2 Box 603  
Woodridge Drive  
Karnach, Texas 75661  
(w/o enclosures)