



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 22, 1997

Ms. Marva M. Gay  
Assistant County Attorney  
Harris County  
1001 Preston, Suite 634  
Houston, Texas 77002-1891

OR97-0127

Dear Ms. Gay:

On behalf of Harris County (the "county"), you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 103257.

Constable Glenn Cheek received a request for a copy of the video film at the seizure of Cause Nos. 96-011446 and 5100141294, as well as the inventory list of Deputy M. Sears. You assert that the requested information is excepted from public disclosure by sections 552.101 and 552.103 of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure information that is confidential by law, either constitutional, statutory, or by judicial decision. You assert that section 552.101 applies to the requested information because you maintain that the information is protected from discovery under Rule 166b(3) of the Texas Rules of Civil Procedure, as work product and party communications. This office has stated that section 552.101 does not cover discovery privileges. *See* Open Records Decision No. 575 (1990) at 2. Information is privileged only to the extent that the court in a particular case deems it to be so. *See id.* Consequently, the county may not withhold the requested information from public disclosure based on section 552.101.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is 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 requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

You raise section 552.103 because you assert that the requested information "relates directly to pending litigation filed by the requestor against Constable Glen Cheek in the 125th Judicial District Court of Harris County." You have established the first prong of the litigation exception, that litigation is pending. However, once a governmental body has shown that litigation is pending or reasonably anticipated, it must then establish the second prong, that the information relates to the litigation. *See* Open Records Decision No. 638 (1996) at 4. To meet the second prong of the section 552.103 exception, a governmental body must explain how the requested information relates to the subject of the litigation. Simply referring to the cause number of a pending case does not establish that the requested information relates to that case. *Id.* The submission of the petition in a pending case may assist this office in the assessment of the relatedness of the requested information to the subject of the pending litigation. However, a governmental body has not necessarily established that requested information relates to pending litigation by just submitting a petition. A governmental body should in every case explain or describe how the requested information relates to the pending litigation. *Id.*

The county did not submit the petition in the pending litigation or otherwise explain how the requested information relates to the pending litigation. Accordingly, we conclude that the county may not withhold the requested information from the requestor based on section 552.103.

We are resolving this matter with this 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 may 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 cursive script, appearing to read "Kay Guajardo".

Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 103257

Enclosures: Submitted document and tape

cc: Ms. Karen Llano  
17305 Kirkwood  
Houston, Texas 77077  
(w/o enclosures)