



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 7, 1997

Mr. John Steiner
Division Chief
City of Austin
Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR97-1041

Dear Mr. Steiner:

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# 106189.

The City of Austin (the "city") received an open records request for records pertaining to the arrest of an individual for, among other things, public intoxication and refusal to identify. You contend the requested records may be withheld from the public pursuant to sections 552.103¹ and 552.108 of the Government Code.

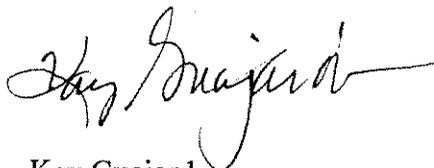
To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. In this instance you have made the requisite showing that the requested information relates to pending criminal litigation for purposes of section 552.103. Accordingly, most of the requested records may be withheld under this section.

¹Because we resolve your request under section 552.103, we need not address at this time your section 552.108 claims.

In reaching this conclusion, however, we assume that the criminal defendant has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the criminal defendant has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103. In this regard, we note that the "front page offense report information" contained in the police reports submitted to this office may not be withheld from the requestor because the criminal defendant would already have had access to this type of information. *See* Open Records Decision No. 597 (1991); *see also Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/RWP/rho

Ref.: ID# 106189

Enclosures: Submitted documents

cc: Mr. John W. Stickels
816 Congress Avenue, Suite 1100
Austin, Texas 78701
(w/o enclosures)