



Office of the Attorney General  
State of Texas

July 16, 1998

DAN MORALES  
ATTORNEY GENERAL

Ms. Roxanne Pais  
Assistant City Attorney  
City of Dallas  
2014 Main Street, Rm. 204  
Municipal Building  
Dallas, Texas 75201

OR98-1681

Dear Ms. Pais:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116611.

The Dallas Police Department received a request for information relating to the arrest and investigation of Johnny Ray McGinnis in connection with the murder of Officer Gary D. McCarthy on February 26, 1998. You contend that the requested documents are excepted from disclosure under sections 552.103 and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Initially, we note that the submitted documents include several documents that appear to have been filed with a court. Documents filed with a court are generally considered public. *See Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992); Attorney General Opinion DM-166 (1992). Therefore, you must make these documents available to the requestor.

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.). We also note that section 552.103(b) provides that "[f]or 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."

You inform this office that Vincent Cooks was convicted of the murder of Officer McCarthy and received the death penalty. You have submitted a letter from the Dallas County District Attorney's Office in which an Assistant District Attorney states that "a writ of habeas corpus is presently pending in federal court in this case." The Assistant District Attorney asks that the requested documents be withheld from disclosure because they relate to the pending litigation. We conclude that you have shown that litigation is pending in this matter and that the requested documents relate to the litigation. Therefore, we find that you may withhold the requested documents from required public disclosure on behalf of the Dallas County District Attorney.

In reaching this conclusion however, we assume that the opposing party in the litigation has not previously had access to the records at issue. 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).<sup>1</sup> In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). We note, however, that the submitted documents may contain information that is confidential by law. Information that is confidential by law must not be released even at the conclusion of the litigation. *See Gov't Code §§ 552.101 (excepting information made confidential by law); .352 (providing criminal penalties for release of confidential information).*

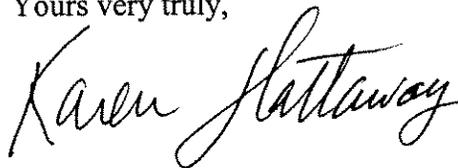
Because we are able to resolve this matter under section 552.103, we need not address your other argument against disclosure. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is

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<sup>1</sup>We note that section 552.103(a) cannot be invoked to withhold from disclosure front page offense report information, as this information should have already been provided to the defendant by a magistrate or in an indictment. Open Records Decision No. 597 (1991).

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 any questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Karen Hattaway". The signature is written in a cursive style with a large, sweeping initial "K".

Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/mjc

Ref: ID# 116611

Enclosures: Submitted documents

cc: Ms. Marsha Rutenbar  
Attorney at Law  
6901 Arcola Drive  
Plano, Texas 75074  
(w/o enclosures)