



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 13, 1998

Ms. Marva M. Gay
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR98-1916

Dear Ms. Gay:

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# 117975.

The Harris County Medical Examiner's Office (the "county") received a request for all photographs related to case numbers 97-2927 and 97-2909. You assert that the requested information is excepted from required public disclosure by sections 552.103 and 552.108 of the Government Code.

Initially, we note that section 11 of article 49.25 of the Texas Code of Criminal Procedure provides that autopsy reports, including the full report and detailed findings, are public records. *See* Open Records Decision No. 529 (1989) at 4. Thus, if the photographs at issue were taken during the actual post-mortem examinations, they are considered part of the complete autopsy reports that are public under section 11.

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.

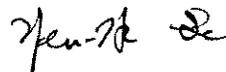
To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts 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 assert that the requested photographs relate to pending litigation, *Marilyn Murr Doyle v. Harris County*, Cause No. 98-26042 (Dist. Court of Harris County). After reviewing the information and your arguments, we conclude that you have shown that litigation is pending and that the requested information relates to pending litigation. Therefore, except as noted above regarding autopsy report records, you may withhold the requested information under section 552.103.

Generally, however, 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). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, 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).

Because the matter is resolved under section 552.103, we need not address your section 552.108 claim. 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ms. Marva M. Gay - Page 3

Ref.: ID# 117975

Enclosures: Submitted documents

cc: Mr. Peter M. Doyle
3806 Browning Street
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(w/o enclosures)