



February 9, 1999

Ms. Tenley A. Aldredge  
Assistant County Attorney  
County of Travis  
P. O. Box 1748  
Austin, Texas 78767

OR99-0387

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122034.

The Travis County Sheriff's Office (the "sheriff's office") received a request for the following information:

- (1) The Incident Report of Jack Blalack's Arrest.
- (2) The Booking File of Jack Blalack.
- (3) The post logs pertaining to Jack Blalack.

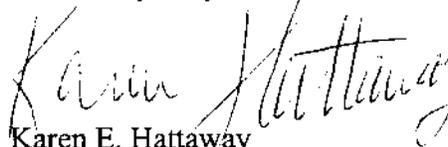
You informed this office by telephone that the sheriff's office does not have documents responsive to the item (1) of the request, because the Austin Police Department made the arrest. You indicated that you will inform the requestor that he should direct item (1) of his request to the Austin Police Department. You contend that the documents responsive to items (2) and (3) of the request are excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *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 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

You have demonstrated that the sheriff's office is a party to pending litigation regarding Mr. Jack Blalack's death, and that the documents at issue relate to the pending litigation. We note, however, that information normally found on the front page of an offense report is generally considered public. *See Houston Chronicle Publ'g 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); Open Records Decision Nos. 597 (1991), 362 (1983), 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the incident report.<sup>1</sup> You may withhold the remaining information from disclosure pursuant to section 552.103(a).<sup>2</sup>

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,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

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Ref: ID# 122034

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<sup>1</sup>We note that article 49.18(b) of the Code of Criminal Procedure requires the preparation of a custodial death report if a person dies while in the custody of a peace officer or if a prisoner dies while confined in a jail or prison. Part I of the custodial death report includes the name, sex, ethnicity, date and time of arrest of the deceased; the criminal charge against the deceased; the exact location of the deceased at the time of death; the nature, date, and time of death; the medical cause of death; and a specific description of how the death occurred. In Open Records Decision No. 521 (1989), this office held that under article 49.18(b), in conjunction with a directive issued by the Office of the Attorney General, Part I of the custodial death report is public information.

<sup>2</sup>We note that if the opposing parties in the litigation have seen or had access to any of the information at issue, there would be no justification for withholding that information pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Enclosures: Submitted documents

cc: Mr. James W. Blalack  
1505 Rock Creek Drive  
Round Rock, Texas 78681-6223  
(w/o enclosures)