



April 12, 1999

Mr. John Bradley
First Assistant District Attorney
Williamson County
405 M.L.K., No. 1
Georgetown, Texas 78626

OR99-0987

Dear Mr. Bradley:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 123865.

The Williamson County District Attorney (the “district attorney”) received a request to review and copy all records pertaining to the arrest, investigation, and prosecution of suspects in the murder of Christopher Wade Dean. You seek to withhold the requested information based on section 552.103 of the Government Code. You have submitted a representative sample of the information the district attorney seeks to withhold from disclosure.¹ Gov’t Code § 552.301(b)(3) (submission of representative sample of information).

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

- (a) Information is excepted from [required public disclosure] if it is information:

¹In reaching our conclusion here, we assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); Open Records Decision No. 588 (1991). Thus, this office must determine whether the requested information "relates" to the litigation for the purposes of section 552.103(a), not whether the information is exculpatory evidence that the district attorney must release to the defendant under *Brady v. Maryland*, 373 U.S. 83 (1963).

Section 552.103(b) provides:

For 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 state that the requestor "has filed a postconviction writ of habeas corpus on behalf of Shane Drousche." We therefore conclude that the district attorney is a party to pending litigation. In addition, we find that the submitted records 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. Accordingly, except for front page offense report information, we conclude that the district attorney may withhold the remaining requested information from the requestor based on section 552.103.

However, if the opposing party in the litigation 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(a). Open Records Decision

Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). However, portions of the information that are confidential by law must not be released even at the conclusion of the litigation. Gov't Code §§ 552.101 (excepting information made confidential by law), .352 (providing criminal penalties for release of confidential information).

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.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 123865

Enclosures: Submitted documents

cc: Ms. Helen J. Bearsdley
P.O. Box 2482
Austin, Texas 78768
(w/o enclosures)