



May 24, 1999

Ms. Tammy Harrison  
Assistant District Attorney  
County of Dallas  
Frank Crowley Courts Building, LB 19  
Dallas, Texas 75207-4399

OR99-1429

Dear Ms. Harrison:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 124497.

The Dallas County District Attorney's Office (the "district attorney") received a request for information relating to the following three cases against LaRoyce Lathair Smith: Cause Nos. F-90-29085 (assault), F-90-54292 (possession of a controlled substance), and F-91-22803 (capital murder). You inform us that the district attorney does not have any files relating to the possession charge. You also state that the district attorney "does not possess a separate prosecution file pertaining to Smith's 1990 misdemeanor conviction for assault," because "[t]he file has been destroyed in the nine year interim between Smith's conviction and the current open records request." Thus, the only prosecution file at issue is the capital murder file, which you acknowledge contains documents concerning both the capital murder and the 1990 assault conviction. You state that some of the information from this file has been released to the requestor.<sup>1</sup> You contend that the remaining information in the file is excepted from disclosure pursuant to section 552.103 of the Government Code. In the alternative, you argue that the remaining information is excepted from disclosure pursuant to section 552.108 of the Government Code and section 552.101 of the Government Code in conjunction with various confidentiality statutes. We have considered the exceptions you

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<sup>1</sup>You state that the following information has been disclosed to the requestor: basic information concerning the offense, including the indictment, the front page of the offense reports, the arrest warrant, and the affidavit for arrest warrant, copies of documents made available to defense counsel during trial, including all offense reports, voluntary statements and grand jury testimony of witnesses who testified at trial, evidence reports, diagrams, Taco Bell employment records, and various photographs included in the file.

claim and have reviewed a representative sample of the documents at issue.<sup>2</sup>

Initially, we note the submitted documents include documents that have been filed with a court. Documents filed with a court are generally considered public and must be released. *See Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992).

Section 552.103(a) of the Government Code provides 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(a) 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. *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). 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."

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<sup>2</sup>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). 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.

You inform us that the documents at issue relate to the prosecution of Mr. Smith for his involvement in the 1991 robbery of a Taco Bell during which the night manager was killed. Mr. Smith was convicted of capital murder, and a federal writ of habeas corpus contesting Mr. Smith's capital conviction is pending against the state. You explain that

The files pertaining to Smith's conviction for capital murder are directly related to this pending litigation. Moreover, any documents pertaining to Smith's conviction for assault in 1990 are also related to the pending writ litigation. Smith's assault conviction was admitted into evidence during the punishment phase of Smith's capital murder trial as an extraneous offense showing future dangerousness.

We have reviewed the submitted documents and agree that they are related to the pending writ. Therefore, you the district attorney may withhold the documents from disclosure under section 552.103(a) of the Government Code.

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). 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).

Because we are able to resolve this matter under section 552.103, we do not address your alternative arguments against disclosure. 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.

Sincerely,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref.: ID# 124497

encl. Submitted documents

cc: Mr. Maurie Levin  
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(w/o enclosures)