



May 24, 1999

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

OR99-1430

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# 124496.

The Dallas County District Attorney's Office received a request for information relating to the prosecution of Kevin Shaw. You state that some of the requested information has been released to the requestor.¹ You contend that the remaining responsive information 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 sections 552.108 and 552.114 of the Government Code and article 20.02 of the Code of Criminal Procedure. We have considered the exceptions you claim and have reviewed a representative sample of the documents at issue.²

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

¹You inform us that the following information has been or will be 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.

²We 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.

(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."

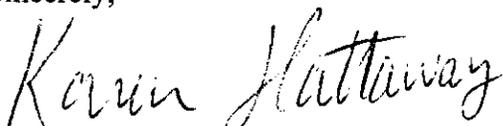
You inform us that the documents at issue relate to the prosecution of Mr. Shaw for his involvement in the 1991 robbery of a Taco Bell during which the night manager was killed. Mr. Shaw was convicted of aggravated robbery and his accomplice, LaRoyce Smith, was convicted of capital murder. A federal writ of habeas corpus contesting Mr. Smith's capital murder conviction is pending against the state. Because the convictions of both men "arose from one criminal episode," you contend that documents relating to the prosecution of Mr. Shaw are also related to Mr. Smith's pending writ of habeas corpus. We agree that the documents at issue relate to the pending federal writ. Therefore, you may withhold the documents from disclosure under section 552.103(a).

In reaching this conclusion however, we assume that neither the opposing party in the litigation nor any of his previous attorneys has 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 at this time.³ 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# 124496

encl. Submitted documents

cc: Ms. Maurie Levine
Attorney at Law
P.O. Box 280
Austin, Texas 78767
(w/o enclosures)

³We note, however, that some of the information at issue is confidential by law, and therefore must be withheld from disclosure even after the litigation has concluded. *See* Gov't Code § 552.352 (distribution of confidential information is a misdemeanor offense).