



August 25, 1999

Ms. Mary Ann Courter
Chief
Legal Services
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR99-2404

Dear Ms. Courter:

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# 127967.

The Texas Department of Public Safety (the "department") received a total of ten written requests for a video tape recording of a fatal automobile accident between a state trooper and another automobile. One of the requests also seeks certain other department records pertaining to the accident.¹ You contend that both the video tape and the other requested records are excepted from required public disclosure pursuant to sections 552.103 and 552.108 of the Government Code.

In your first correspondence to this office regarding this matter, you explained that the survivors of the individual killed in the accident had filed suit for a temporary restraining order, temporary injunction, and permanent injunction against the department for purposes of preserving evidence related to the accident. Although that litigation was subsequently non-suited, a second lawsuit by the same parties has been filed against the department for, among other things, damages resulting from the accident.

To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the

¹You state, however, that the department has released the accident report and the autopsy report to this requestor.

governmental body is a party. *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 at 1 (1991). In this instance you have made the requisite showing that the requested information relates to pending civil litigation against the department for purposes of section 552.103. The requested records may therefore be withheld at this time pursuant to section 552.103.

In reaching this conclusion, however, we assume that the opposing parties to the litigation have not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestors pursuant to section 552.103. We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).²

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/RWP/nc

Ref.: ID# 127967

Encl: Submitted video tape

²Because we resolve your request under section 552.103, we need not address the applicability of section 552.108 at this time. If the department receives other requests for this information after it has been disclosed to the opposing parties, the department must request another decision from this office if you still believe the records to be excepted from public disclosure.

cc: Ms. Barbara Magana
KPRC Assignment Editor
P.O. Box 2222
Houston, Texas 77252-2222
(w/o enclosures)

Mr. Alfredo Sanchez
KTMD Telemundo 48
3903 Stoney Brook
Houston, Texas 77063
(w/o enclosures)

Ms. Marcia Torres
KXLN Univision 45
9440 Kerby Drive
Houston, Texas 77054
(w/o enclosures)

Mr. Scott E. Williams
Galveston County Daily News
8522 Teichman
Galveston, Texas 77554
(w/o enclosures)

Ms. Deanna Landron-Reyes
45 KXLN-TV
9440 Kerby Drive
Houston, Texas 77054
(w/o enclosures)

Mr. Chris McDonald
Fox 26 - KRIV Houston
4261 Southwest Freeway
Houston, Texas 77027-7201
(w/o enclosures)

Mr. Kevin Moran
Houston Chronicle
P.O. Box 4260
Houston, Texas 77210
(w/o enclosures)

Mr. Bill Langlois
KHOU TV
P.O. Box 11
Houston, Texas 77001-0011
(w/o enclosures)

Mr. Derik Lattig
KTRK-TV
3310 Bissonnet
Houston, Texas 77005
(w/o enclosures)

Ms. Monica C. Vaughan
Houssierre, Durant & Houssierre, L.L.P.
Three Post Oak Central
1990 Post Oak Boulevard, Suite 800
Houston, Texas 77056-3812
(w/o enclosures)