



September 28, 1999

Mr. Brinkley L. Oxford
City Attorney
City of Edinburg
P.O. Box 1079
Edinburg, Texas 78540-1079

OR99-2728

Dear Mr. Oxford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128907.

The City of Edinburg received a request for an investigation report, witness statements, and any photographs pertaining to an incident resulting in the death of Raul Santos, Jr. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

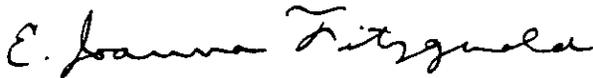
Section 552.103(a) of the Government Code, the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a 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). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You have demonstrated that the requested information is related to pending litigation. *See Santos v. City of Edinburg, et al.*, No. C-4002-99-E (275th Dist. Ct., Hidalgo County, filed Aug. 2, 1999). Therefore, you may withhold the requested records from disclosure under section 552.103(a) at this time. However, basic information in a police offense report generally may not be withheld under section 552.103. Open Records Decision No. 362 (1983). Thus, the type of information that is considered to be front page offense report information must be released, even if this information is not actually located on the front page of the offense report. *See* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *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)). In addition, we note that once information has been obtained by all parties to the litigation through discovery or otherwise, no interest under section 552.103(a) continues to exist with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Moreover, 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).

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,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 128907

Encl: Submitted documents

cc: Mr. Aurelio Leo Lara
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(w/o enclosures)