



November 12, 1999

Mr. John S. Schneider, Jr.
First Assistant City Attorney
City of Pasadena
P.O. Box 672
Pasadena, Texas 77501

OR993231

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID #130675.

The Pasadena Police Department received a request for a full report relating to Case No. 99-007216. You have submitted a copy of the requested report. You claim that it is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

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 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.

Act of June 18, 1999, 76th Leg., R.S., S.B. 1851, § 6 (to be codified at Tex. Gov't Code Ann. § 552.103).

The governmental body has the burden of providing relevant facts and documents sufficient to demonstrate that section 552.103 is applicable to the requested information. To sustain this burden, the governmental body must demonstrate: (1) that litigation is pending or reasonably anticipated and (2) that 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

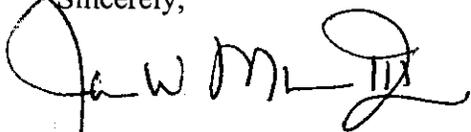
1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App. – Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). Both prongs of the test must be met for information to be excepted under section 552.103. In this instance, you have demonstrated that the requested report relates to pending civil litigation in which the City of Pasadena is one of the defendants and the requestor is one of the plaintiffs. We therefore conclude that most of the report may be withheld from public disclosure pursuant to section 552.103.

We note, however, that section 552.103 does not permit you to withhold the basic front page information contained in an offense report. *See* Open Records Decision No. 362 (1983). We believe that such information is that held to be public in *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). *See* Open Records Decision No. 127 (1976). You must release information that is considered to be basic front page offense report information to the extent that it appears in the requested report.

We further note that if the opposing parties to the pending litigation have seen or had access to any of the requested information, there is no interest in withholding that information from the requestor under section 552.103. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103 ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). If, however, the requested report contains any information that is confidential by law, you must not release such information even at the conclusion of the litigation.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is stylized with a large initial "J" and a prominent "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ch

Ref: ID# 130675

Encl. Submitted documents

cc: Mr. Ted Barta
3615 Country Road
Pasadena, Texas 77505
(w/o enclosures)