



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1995

Ms. Elaine Fannin
Assistant General Counsel
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR95-1621

Dear Ms. Fannin:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31383.

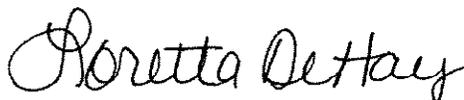
The Texas Department of Agriculture received an open records request for certain records that you contend may be withheld from the public pursuant to section 552.103(a) of the Open Records Act. To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information relates to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that the requested information relates to anticipated litigation for purposes of section 552.103(a); the requested records may therefore be withheld.

In reaching this conclusion, however, we assume that the opposing party to the anticipated 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 no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Finally, 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 note that one of the records submitted for our review appears to be a medical record. Section 5.08¹ of the Medical Practice Act, V.T.C.S. art. 4495b, provides that “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.” Section 5.08(j)(3) provides for further release of confidential medical record information obtained with a valid consent for release only if the disclosure “is consistent with the authorized purposes for which consent to release the information was obtained.” *See also id.* § 5.08(c). Thus, the Medical Practice Act prohibits disclosure of the medical record unless the department concludes that further release is authorized pursuant to subsections (c) or (j)(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.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 31383

Enclosures: Submitted documents

cc: Mr. Patrick Ashley
Texas Farm Bureau Claim Office
P.O. Box 27
Rosenberg, Texas 77471
(w/o enclosures)

¹The Seventy-fourth Legislature has amended section 5.08 of the Medical Practice Act, V.T.C.S. art. 4495b, effective September 1, 1995. *See* Act of May 28, 1995, ch. 856, §§ 4-7, 1995 Tex. Sess. Law Serv. 4290, 4293-95 (Vernon); Act of May 27, 1995, ch. 1039, § 71, 1995 Tex. Sess. Law Serv. 5145, 5169 (Vernon).