



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 14, 1997

Ms. Katheryn H. West
Assistant City Attorney
City of Dallas
Municipal Building
2014 Main, Room 206
Dallas, Texas 75201

OR97-0059

Dear Ms. West:

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# 102891.

The City of Dallas (the "city") received a request for "copies of any and all public record documents pertaining to the investigation and disposition of the complaint" against two police officers. However, the city seeks to withhold portions of the requested information based on section 552.103 of the Government Code. You enclose representative samples of the information the city seeks to withhold.¹

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city 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. *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 (1990) at 4. The city must meet both prongs of this test for information to be excepted under section 552.103(a).

¹We 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.

After reviewing the first page of the court-filed petition naming the city employees sued as a consequence of their employment as police officers, as well as your representation that a civil suit is pending against the city and the city police for false arrest, and the remaining documents submitted, we conclude that litigation is pending or reasonably anticipated and that the documents are related to the litigation. Therefore, the city may withhold the requested documents under section 552.103. We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a).² Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Additionally, we note that section 552.101 of the Government Code excepts from required public disclosure information considered to be confidential by law. Access to the medical records is governed by provisions of the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. The MPA provides, in part:

(b) Records 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.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

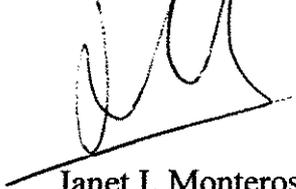
Thus, access to the medical records at issue is not governed by chapter 552 of the Government Code, but rather provisions of the MPA. Open Records Decision No. 598 (1991).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

²We observe the presence of a copy of the original complaint and jury demand filed with the court which names the requestor as one of the co-defendants but note that you have marked the submitted portion of the complaint as "confidential" without further argument. The filed complaint is a public record which may not now be withheld under the facts presented in the instant case. *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992).

under the facts presented to us in this request and may 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,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', written over a horizontal line.

Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/rho

Ref.: ID# 102891

Enclosures: Submitted documents

cc: Ms. Phillissa Russell
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(w/o enclosures)