Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 15, 1997

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR97-1116

Dear Ms. Nguyen:

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# 105769.

The City of Houston Fire Department (the "city"), which your office represents, received a request for "[a]ll documents detailing the Houston Fire Department's investigation into the L-67 incidents." You state that the city is making available to the requestor a portion of the requested information. However, you seek to withhold all of the remaining information pursuant to sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation "to which the state or a political subdivision 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. To show the applicability of section 552.103, a governmental entity must show that (1) litigation is pending or reasonably anticipated and that (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 the information to be excepted under section 552.103(a).

You assert that Exhibit 2 of the submitted information is excepted from required public disclosure under section 552.103, based on anticipated litigation. In this instance,

based on this evidence and review of the submitted documents, our office concludes that the city has established that litigation is reasonably anticipated and that the requested information relates to the anticipated litigation. Therefore, you may withhold the requested information under section 552.103.

In reaching this conclusion, however, we assume that the opposing party to the 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, for example, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information.[1] Open Records Decision Nos. 349 (1982), 320 (1982). Finally, 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). However, you may not release information made confidential by section 552.101 or other law, even after the litigation has concluded.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 773.091(b) of the Health and Safety Code provides:

> Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Section 773.091(b) of the Emergency Medical Services Act (the "EMS Act") provides for the confidentiality of the records submitted as Exhibit 7. The EMS Act also provides for exceptions to the confidentiality of these records. For example, section 773.092(a)(2) provides for release upon consent of the patient and section 773.092(e)(2) provides that records may be disclosed to governmental agencies when required by law.

Exhibit 7 consists of the HPD ambulance records. We conclude that access to the records at issue is governed by provisions of the EMS Act. *See* Open Records Decision No. 598 (1991). Thus, the records may be released only as provided for under section 773.092 and the exceptions to confidentiality provided.

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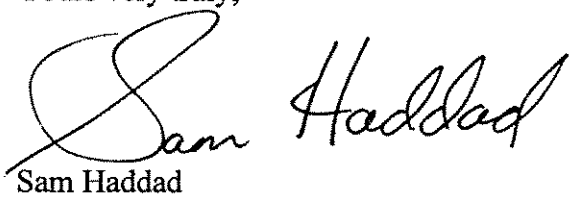
[1]In particular, we note that front page incident report information may not be withheld from disclosure under section 552.103. *See* Open Records Decision No. 597 (1991) (concluding that statutory predecessor to section 552.103 did not except basic information in incident report); *see also Houston 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); Open Records Decision No. 127 (1976) (information normally found on front page of offense report is generally considered public).

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 any questions about this ruling, please contact our office.

Yours very truly,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref: ID# 105769

Enclosures: Submitted documents

cc: Mr. Wayne Dolcefino
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(w/o enclosures)