



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 9, 1997

Ms. Roseanne Gallia
President, Board of Directors
Lavaca Hospital District
1400 North Texana
Hallettsville, Texas 77964-2099

OR97-1329

Dear Ms. Gallia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 106543.

The Lavaca Hospital District (the "district") received a request for 23 categories of information. You state that a large amount of information is sought and that portions of the request are uncertain. You relate, however, that the district was unable to informally clarify the scope of the request with the requestor; thus, you now seek a decision from this office. See Gov't Code 552.222(b); Open Records Decision No. 304 (1982). We note that it is improper even in a clarification to inquire into the purpose for which information will be used. *Id.* Categories 1-8 and 22 of the request seek the district's professional contracts with eight named doctors and any contract for the delivery of obstetric services. Requests 9-16 ask for all correspondence between the district and the named doctors regarding the contracts. Request 17 solicits the internal memoranda involving a rural health clinic. You state that this request is unclear and you can not identify what specific records are sought. Categories 18 and 19 seek any notices, press releases, or other documents concerning the hours of operation of and the closing of a rural health clinic. Request 20 asks for the minutes of the district's executive committee relating to any rural health clinic. Category 21 requests the records of calculation of compensation for a named doctor. Finally, request 23 seeks any communication or memoranda about the operation or staffing of the rural health clinic. You explain that the district will release all public notices and press releases as requested in categories 18 and 19. You additionally state that the district will provide the requestor with the minutes sought in request number 20. You claim that the remaining responsive information is excepted from required public disclosure by sections 552.103 and 522.104 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Initially, you express concern that parts of the request for information, specifically category 17, is unclear and you cannot determine with specificity the documents sought by

the requestor. Numerous opinions of this office have addressed situations in which a governmental body has received either an "overbroad" written request for information or a written request for information that the governmental body is unable to identify. Open Records Decision No. 561 (1990) at 8-9 states:

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982); 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974).

In response to the request at issue here, the district must make a good-faith effort to relate the request to information in the district's possession and must help the requestor to clarify his request by advising him of the types of information available. We note that if a request for information is unclear, a governmental body may ask the requestor to clarify the request. Gov't Code § 552.222(b); *see also* Open Records Decision No. 561 (1990) at 8. In this case, you state that you have asked the requestor to clarify his request for information, but have had no response. You, therefore, seek a ruling on those documents you believe fall within the scope of the request.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, 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.

The district 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 district must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you inform this office that the district is currently involved in pending litigation. Conner, et al. v. Lavaca County Hosp. Dist., No. V-96-131 (S.D. Tex. filed December 13, 1996). You have provided this office with the complaint in that suit. You have shown that litigation is pending. After reviewing the submitted materials and your arguments, we also conclude that the requested records relate to the pending litigation. You may withhold the remaining information that you seek to withhold under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, 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).

Because we are able to make a determination under section 552.103, we do not address your argument under section 552.104 at this time. 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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 106543

Enclosures: Submitted documents

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(w/o enclosures)

