



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 29, 1998

Ms. Melanie Barton
Assistant District Attorney
Dallas County
Administration Building
411 Elm Street
Dallas, Texas 75202

OR98-0282

Dear Ms. Barton:

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# 112196.

Dallas County (the "county") received several requests for information concerning the New Holland and Lew Sterrett facilities. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you advise this office that the county has no written leases or contracts for the New Holland Jail. Additionally, you state that the county has no contracts for medical services. Chapter 552 of the Government Code applies only to information in existence and does not require a governmental body to prepare new information. Open Records Decision Nos. 605 (1992), 572 (1990), 430 (1985). Therefore, the county need not respond to this part of the request.

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 governmental body 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 governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 (1986) at 4. Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 (1989) at 5 (litigation must be "realistically contemplated"). 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 from disclosure.¹

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 anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Moreover, documents filed with the court generally may not be withheld from disclosure. Open Records Decision No. 525 (1989) at 4; *cf. Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992). Further, to the extent that any of the information at issue has been publicly disclosed by the county at a county commissioner's court meeting, it may not be withheld from disclosure pursuant to section 552.103(a). *See* Gov't Code § 552.007 (information made public may not be selectively withheld from disclosure); Open Records Decision Nos. 551 (1990) at 2-3, 221 (1979) at 1 (official records of public proceedings of governmental body are among most open of records). 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).

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 on as a previous

¹We observe that some of the records at issue are medical records. Access to medical records is governed by provisions of the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes, rather than chapter 552 of the Government Code. Open Records Decision No. 598 (1991). Section 5.08(j)(3) provides that medical records may be released upon the written consent of a patient when the consent specifies: (1) records covered by the release, (2) reason or purpose for release, and (3) person to whom the information should be provided. Also, section 5.08(j)(3) requires that any subsequent release of medical records be consistent with the purposes for which the county obtained the records. Open Records Decision No. 565 (1990) at 7. Therefore, if the requestor has complied with the access provisions of the MPA, the county may not withhold the medical records under section 552.103 of the Government Code.

determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/glg

Ref.: ID# 112196

Enclosures: Submitted documents

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(w/o enclosures)