



March 31, 1999

Ms. Lois A. Wischkaemper
Galey & Wischkaemper
920 Avenue Q
Lubbock, Texas 79408-1019

OR99-0881

Dear Ms. Wischkaemper:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124244.

The Lubbock County Hospital District received a request for information relating to a particular incident and hospital procedures relative to such occurrences. You seek to withhold some of the requested information under sections 552.101 and 552.103 of the Government Code.

Section 552.103(a) of the Government Code, known as the litigation exception, exempts from required public 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.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the

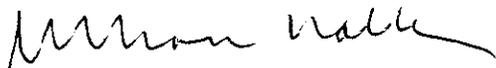
governmental body is a party. Open Records Decision No. 588 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

In connection with your section 552.103 claim, you submitted a notice of claim filed, by the requestor relating to the incident to which the requested information pertains. You state that the notice of claim was filed under the Texas Tort Claims Act. *See* Civil Practice and Remedies Code chapter 101. We believe that you have demonstrated that the city reasonably anticipates litigation. *See* Open Records Decision No. 638 (1996). Having examined the notice of claim, your arguments, and the information at issue, we conclude that the requested information relates to the anticipated litigation and that, accordingly, you may withhold the information at this time under section 552.103(a).

We assume, however, that none of the information in the records at issue has previously been made available to the opposing party in the litigation. Absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent the opposing party has seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a). Similarly, section 552.103(a) does not authorize a governmental body to withhold materials which have already been made available to the public. Open Records Decision No. 436 (1986). 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).

Since we have resolved your request under section 552.103(a), we need not address your other claim. 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.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/eaf

Ref.: ID# 124244

Encl. Submitted documents

cc: Mr. Damon Richards
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Lubbock, Texas 79414
(w/o enclosures)