



April 20, 1999

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

OR99-1059

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 123469.

The City of Houston (the “city”) received a request for various information concerning a fire at the Pinemont Apartments. You assert that the requested information is excepted from required public disclosure based on sections 552.101 and 552.103 of the Government Code.

You raise section 552.101 in regard to the emergency medical service records. Section 552.101 excepts from disclosure information made confidential by law, including information made confidential by statute. 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. [Emphasis added.]

We agree that the records, which include “EMS Unit Response Profiles” and the “EMS Basic Response & Patient Evaluation Records” constitute records made confidential under section

773.091(b). Consequently, the city must withhold these records pursuant to section 552.101 of the Government Code.<sup>1</sup>

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is 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 requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin, 1997), *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.).

You inform us that an attorney has filed a notice of a claim for damages for the death of the attorney's client as a result of the fire. You assert that the information requested relates to reasonably anticipated litigation of this claim. In this instance, you have made the requisite showing that the requested information relates to litigation for purposes of section 552.103(a). See Open Records Decision No. 638 (1996). The city may withhold the information from the requestor based on section 552.103.<sup>2</sup>

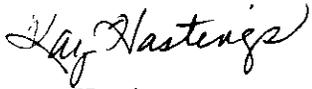
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<sup>1</sup>As some of the records concern Mr. Park, we note that the Health and Safety Code provides exceptions to the confidentiality of section 773.091 in certain circumstances and consent for the release of confidential information by a personal representative if the patient is deceased. See Health and Safety Code §§ 773.092, .093.

<sup>2</sup>If the opposing party in the litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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 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.

Sincerely,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/ch

Ref.: ID# 123469

encl. Submitted documents

cc: M.r. Joseph W. Walker  
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(w/o enclosures)