



June 4, 1999

Ms. Tenley Aldredge
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR99-1556

Dear Ms. Aldredge:

You have asked whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 124626.

The Travis County Sheriff's Office (the "sheriff's office"), which your office represents, received a request for a variety of information concerning specific allegations made by Robert Hawkins involving Cristina Cinkota, and alleged incidents which occurred at the Del Valle Correctional Center. In response to the request, you submit to this office for review the information which you assert is responsive. You claim that the requested information is excepted from disclosure under sections 552.101,¹ 552.103, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions and arguments you have raised and reviewed the submitted information.

Because section 552.103(a) of the Government Code is the most inclusive exception you raise, we will consider this exception first. 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

¹ Information about public employees' job performance and work behavior is commonly held not to be excepted from required public disclosure under common-law privacy. Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow).

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 sheriff's office 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. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *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 at 4 (1990). The sheriff's office must meet both prongs of this test for information to be excepted under section 552.103(a). Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the sheriff's office must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989).

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) (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. See Open Records Decision No. 331 (1982). Nor does the mere fact that an individual hires an attorney and alleges damages serve to establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

In this instance, you have supplied to this office a claim letter from an attorney who represents an opposing party. You state that the requestor's letter is a "notice of claim" letter for damages on behalf of his client.² The notice of claim involves an alleged claim against the sheriff's office for damages, "mental anguish, embarrassment, and fear," sustained by the requestor's client. The requestor's letter states that "[w]e hereby give notice of our intent to seek damages . . . in the maximum amount of \$100,000, and to also seek attorney's fees." Based on your arguments and the submitted records, we conclude that litigation is reasonably

² Under Open Records Decision No. 638 (1996), a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney, and (2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA") or applicable municipal statute or ordinance.

anticipated. Open Records Decision No. 638 (1996). We also conclude that the documents submitted by the sheriff's office are related to the litigation for the purposes of section 552.103(a). The documents may, therefore, be withheld pursuant to section 552.103(a).

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. 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).³

As we resolve your request under section 552.103, we need not address your other claimed exceptions 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.

Sincerely,

A handwritten signature in cursive script that reads "Sam Haddad". The signature is written in black ink and is positioned above the typed name.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 124626

encl: Submitted documents

³We note that some of the information in the submitted documents is also confidential by law. Therefore, once litigation has concluded should there be a subsequent request for this information, we advise the sheriff's office to exercise caution and seek a ruling from this office concerning the records. *See* Gov't Code § 552.352, 552.101 (NCIC/TCIC records), 552.117 (peace officer's information), 552.130 (release and use of information obtained from motor vehicle records); *see also* section 5.08 of V.T.C.S. article 4495b, the Medical Practice Act (the "MPA") (access to medical records is not governed by chapter 552 of Government Code, but rather provisions of MPA).

cc: Mr. Steve Gibbins
Gibbins & Krebs, L.L.P
500 West 13th Street
Austin, Texas 78701
(w/o enclosures)