



September 12, 2000

Ms. Patricia Ferguson  
Bosque County Attorney  
Bosque County  
116 North Main Street  
P. O. Box 404  
Meridian, Texas 76665

OR2000-3495

Dear Ms. Ferguson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139017.

The Bosque County Sheriff's Office (the "office") received a request for seven categories of documents concerning an investigation into a death that occurred in the Bosque County Jail. You state that you have released the autopsy report, book-in form, arraignment form, as well as information responsive to items one and three of the request. You assert, however, that the remaining records, including incident reports, a custodial death report, investigation records and personnel records, are excepted from required public disclosure under sections 552.103, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that the responsive information includes a custodial death report. In Open Records Decision No. 521 at 5 (1989), this office concluded that under article 49.18(b) of the Code of Criminal Procedure, in conjunction with a directive issued by the Office of the Attorney General, section one of a custodial death report filed with this office is public information, but sections two through five of the report, as well as attachments to the report, are confidential. *See* Code Crim. Proc. art. 49.18(b) (attorney general shall make report, with exception of any portion of report that attorney general determines is privileged, available to any interested person). Your office must release section one of the custodial death report. However, because sections two through five of the report and attachments thereto are deemed confidential under article 49.18(b), your office must not release the remaining portions of exhibit C to the requestor.

Next, we note that some of the responsive information is made public by section 552.022 of the Government Code. Specifically, the requestor asks for the name, sex, ethnicity, salary,

title, and dates of employment of each employee and officer who was on duty during a specific time period. These categories of information are expressly made public by section 552.022(a)(2) of the Government Code and are "not excepted from required disclosure under [chapter 552 of the Government Code] unless they are expressly confidential under other law." Gov't Code § 552.022(a). Sections 552.103 and 552.108 of the Government Code are discretionary exceptions and are, therefore, not considered "other law" that makes information confidential. *See generally* Open Records Decision No. 665 (2000). You indicate, however, and we agree, that the documents submitted as exhibit I contain peace officer social security numbers which are excepted from disclosure under section 552.117(2).<sup>1</sup> Accordingly, you must redact these social security numbers before releasing the contents of exhibit I to the requestor.

We will now consider whether the remaining information may be withheld from disclosure under section 552.103. In order to establish a section 552.103 claim, your office must demonstrate 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, 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). Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, your office must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986). A governmental body may establish that litigation is reasonably anticipated by showing that it has received a claim letter from an allegedly injured party or his attorney and by stating that the letter complies with the notice of claim provisions of the Texas Tort Claims Act (TTCA) or an applicable municipal ordinance or statute. Open Records Decision No. 638 (1996).

Although you have submitted two notice of claim letters from attorneys representing the deceased inmate's next of kin, you do not state that these notices of claim comply with the notice requirements of the TTCA or an applicable municipal ordinance or statute. However, based on the totality of the circumstances presented here, we conclude that litigation is reasonably anticipated and that exhibits B, D, E, F, G, and H are related to the reasonably anticipated litigation for the purposes of section 552.103. Therefore, you may withhold these exhibits pursuant to section 552.103.

We note, however, that generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information

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<sup>1</sup>Section 552.117(2) excepts from required public disclosure the home address, home telephone number, social security number, and the family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure.

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, and it must be disclosed. Moreover, the applicability of section 552.103 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 sections 552.101, 552.103, and 552.117, we need not address your arguments under section 552.108. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

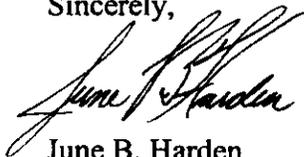
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Public Information Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" being particularly prominent.

June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ljp

Ref: ID# 139017

Encl. Submitted documents

cc: Mr. Stuart Glass P.C.  
Attorneys and Counselors at Law  
8300 Douglas Avenue, Suite 730  
Dallas, Texas 75225  
(w/o enclosures)