



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 27, 2013

Ms. Thao La  
Senior Attorney  
Parkland Health and Hospital System  
5201 Harry Hines Boulevard  
Dallas, Texas 75235

OR2013-03366

Dear Ms. La:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 480198 (DCHD# 12-309).

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature 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.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated

on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551.

To establish 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.” *See* Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim 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. *See* Open Records Decision No. 555 (1990); *see also* Open Records Decision No. 518 at 5 (1989) (litigation must be “realistically contemplated”). In Open Records Decision No. 638 (1996), this office stated a governmental body has met its burden of showing that litigation is reasonably anticipated when it received a notice of claim letter and the governmental body represents that the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act (“TTCA”), Civ. Prac. & Rem. Code, ch. 101. If the governmental body does not represent the notice of claim is in compliance with the TTCA, then the receipt of a claim letter is a factor we will consider in determining, from the totality of the circumstances presented, whether the governmental body has established that litigation is reasonably anticipated. ORD 638. On the other hand, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish litigation is reasonably anticipated. *See* Open Records Decision No. 361 (1983).

You state the district reasonably anticipates litigation because the request letter and a subsequent letter from an attorney’s office act as notice of a TTCA complaint against the district. Upon review, we note the request for information at issue merely requests information. Further, the subsequent letter was provided to the district after the request for information at issue was received by the district. Therefore, we find you have not provided this office with evidence any individual had taken any objective steps toward litigation prior to the date the district received the request for information. *See* Gov’t Code § 552.301(e)(1)(A). Thus, we find you have not established litigation was reasonably anticipated on the date the district received the request for information. Accordingly, the district may not withhold the submitted information under section 552.103 of the Government Code.

You assert the submitted information is excepted under section 552.108 of the Government Code, which provides the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

*Id.* § 552.108(a)(1), (b)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state “the [district] [p]olice [d]epartment’s Internal Affairs Division . . . is conducting an investigation of the complaint.” Section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and that does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525–26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3–4 (1982). Therefore, because you state the submitted information relates to an internal affairs investigation, we find you have failed to demonstrate the applicability of subsection 552.108(a)(1). Accordingly, the district may not withhold the information under subsection 552.108(a)(1). Additionally, we find you have failed to demonstrate release of the submitted information would interfere with law enforcement or prosecution efforts in general. Accordingly, the district may not withhold the submitted information under subsection 552.108(b)(1).

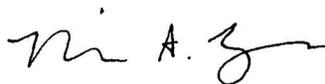
Section 552.130 of the Government Code provides information relating to a driver’s license or motor vehicle title or registration issued by an agency of this state or another state or

country is excepted from public release.<sup>1</sup> *See* Gov't Code § 552.130. Upon review, we find portions of the submitted information consist of motor vehicle record information. Accordingly, the district must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. As no other exceptions to disclosure are raised, the district must release the remaining information to the requestor.<sup>2</sup>

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>We note the information being released contains the requestor's client's driver's license number. The requestor has a right of access to his driver's license number under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). However, if the district receives another request for this information from a different requestor, section 552.130 of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor). Therefore, if the district receives another request for this particular information from a different requestor, then the district is authorized to withhold the requestor's client's driver's license number without requesting a ruling from this office.

Ref: ID# 480198

Enc. Submitted documents

c: Requestor  
(w/o enclosures)