



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 24, 1995

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

OR95-200

Dear Ms. Nguyen:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31649.

The City of Houston (the "city") received a request for information concerning an accident involving a police department vehicle. The request, from an attorney investigating that accident, states: "[s]ince we have such sparse information in connection with the incident, we would deeply appreciate your furnishing us with any reports, narrative, or statements [the city] may have generated as to the matter." The city contends that information responsive to this request is excepted from disclosure pursuant to section 552.103(a) of the Government Code.

To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *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 (1990) at 4. This office has concluded that a reasonable likelihood of litigation exists when an attorney makes a written demand for damages and promises further legal action if such is not forthcoming. Open Records Decision No. 551 (1990). However, in Open Records Decision No. 361 (1983), we determined that litigation was not reasonably anticipated where an applicant who was rejected for employment hired an attorney, who as part of his investigation, sought information about that rejection. In that situation and the one at hand, records have been sought as part of an investigation but the attorney has not demanded damages and threatened to sue.

You contend that the city "has reason to anticipate the filing of a claim" in connection with the injury. However, no claim for damages has been filed at this point. Had a claim for damages been filed, that might show that steps toward litigation had been taken. In Open Records Decision No. 452 (1986), this office stated:

Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it -- unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Whether litigation is reasonably anticipated must be determined on a case-by-case basis.

Open Records Decision No. 452 (1986) at 4 (citations omitted). Although there may be a chance of litigation in this situation, you have presented no "concrete evidence" that litigation is reasonably anticipated. *Id.* Since the city has not met its burden of showing that litigation is reasonably anticipated, the information at issue must be released.

However, some of the information at issue is confidential and may not be released. You submitted to this office for review emergency medical service records from the city fire department. Access to emergency medical service records is governed by section 773.091 of the Health and Safety Code, the Emergency Medical Services Act, rather than section 552.103 of the Government Code. *See Open Records Decision No. 598 (1991).*¹ Section 773.091 provides, in part:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

¹Although Open Records Decision No. 598 addressed a release of records under the Medical Practice Act, it noted section 773.091 of the Health and Safety Code:

Section 773.091 thus provides for the same confidentiality, exceptions to confidentiality, and requirements for release of the information at issue as does section 5.08 of the Medical Practice Act, without conflicting with the provisions of that act. Although release of the information to one qualified to have it is not explicitly mandated by section 773.091 *et seq.*, we believe that reading the statute in harmony with the medical Practice Act requires such a result as to these records. Our analysis under the Medical Practice Act is therefore equally applicable to a consideration of the issue under the Health and Safety Code provisions.

(b) 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.

.....
(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services. . . .

Section 773.092 (a)(2) provides that emergency medical records must be released “when the patient or someone authorized to act on behalf of the patient submits a written consent to release any of the confidential information, as provided by section 773.093.” Section 773.093(a) provides that a valid written consent signed by the patient must specify “(1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released.” Information concerning the identity, evaluation, or treatment of patients may not be disclosed unless the requestor complies with these consent provisions.

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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/KHG/rho

Ref.: ID# 31649

Enclosures: Submitted documents

cc: Mr. Douglas Weitzel
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(w/o enclosures)