



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 14, 1996

Mr. Patrick S. Dohoney
Tarrant County Assistant District Attorney
401 West Belnap
Fort Worth, Texas 76196-0201

OR96-0705

Dear Mr. Dohoney:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 40082.

The Tarrant County Sheriff's Department (the "department") received two requests for information seeking the department's abortion policy and the department's "written policies regarding the transportation of prisoners for medical services that have been in effect within the last five years." You claim that the requested information is exempted from required public disclosure under section 552.103(a). You have submitted the documents responsive to the request for information.

Section 552.103(a) of the Government Code exempts 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 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 show that section 552.103(a) is applicable, you must demonstrate 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.

In this instance, you state that the Tarrant County Sheriff's Office has been sued by a county prisoner who wishes to obtain "an elective abortion." You have submitted to this office the original petition in that cause. You have shown that the action is currently pending. After reviewing the submitted materials, we conclude that litigation is pending and that the document submitted by the department is related to the litigation for the purposes of section 552.103(a). The document may, therefore, be withheld pursuant to section 552.103.

We note that, generally, 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 pending 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).

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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 40082

Enclosures: Submitted documents

cc: Ms. B.C. Cornish
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(w/o enclosures)