



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 12, 1996

Mr. J. Michael Stephans
Administrator
Medical Center Hospital
P.O. Drawer 7239
Odessa, Texas 79760

OR96-0935

Dear Mr. Stephans:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39491.

The Ector County Hospital District d/b/a Medical Center Hospital (the "hospital district") received a request for fifteen categories of documents. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, and 552.111 of the Government Code. You have submitted to this office for review samples of the documents requested. We have considered the exceptions you claimed and have reviewed the sample documents.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The hospital district 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. *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. The hospital district must meet both prongs of this test for information to be excepted under section 552.103(a).

You have submitted to this office for review the Fifth Amended Original Petition in a lawsuit to which the hospital district is a party. Therefore, the hospital district has met the first prong of the section 552.103(a) test. We have reviewed the sample documents submitted to this office for review and conclude that they are related to the pending

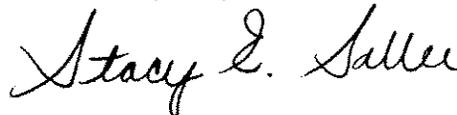
litigation. Therefore, the hospital district may withhold the requested information under section 552.103(a).¹

We note that, generally, when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982).² In addition, the applicability of section 552.103(a) generally ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.³

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.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

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¹ As we have concluded that the hospital district may withhold the requested documents under section 552.103(a), we need not now address your other claimed exceptions. However, if the hospital district receives a subsequent request for these same documents, we suggest that the hospital district re-submit to this office the documents and the hospital district's arguments as to why they are excepted from disclosure. This office will consider those arguments at that time.

²We note that there apparently is a confidentiality order in effect in this lawsuit. To the extent that the requestor has seen any of the information within the scope of this confidentiality order, that information remains confidential pursuant to the provisions of section 552.107(2).

³We note that the hospital district claims that it does not possess some of the information requested. Chapter 552 does not require a governmental body to take affirmative steps to create or obtain information that is not in its possession. Open Records Decision No. 534 (1989).

Ref: ID# 39491

Enclosures: Submitted documents

cc: Gerald K. Fugit, P.C.
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(w/o enclosures)

12

