



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 22, 1996

Ms. Ann Diamond
Assistant District Attorney
401 Belknap Street
Fort Worth, Texas 76196-0201

OR96-2179

Dear Ms. Diamond:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned IDs# 33215, 33325, 33525, 33617, and 101851.

Tarrant County (the "county") received a number of requests for, among other things, information concerning the Tarrant County Medical Examiner's Office and Dr. Nizam Peerwani. You contend that the county does not have some of the information requested and that other information is excepted from disclosure pursuant to sections 552.101, 552.103(a), 552.107(2), and 552.110 of the Government Code.

We note initially that one of the requestors posed questions and asked the county to provide written explanations regarding certain information. Chapter 552 does not require a governmental body to create information in order to provide explanations or to respond to questions. We also note that you submitted to this office records that appear to be sample documents. We assume that these sample documents are truly representative of the responsive records at issue. *See* Open Records Decision No. 499 (1988), 497 (1988).

Because you did not submit to this office records responsive to all of the requests for information, we assume that, in some instances, no responsive documents exist or that these documents have already been provided to the requestors. However, in response to a request by this office for responsive documents, your office, by letter dated May 18, 1995, refused to submit certain responsive documents or samples of such documents. To the extent that responsive documents or samples of those responsive documents were not submitted to this office in accordance with section 552.303 of the Government Code, these documents are presumed to be public. *See* Open Records Decision No. 150 (1977) (presumption of

openness overcome by showing information was made confidential by other law or affects third party interests).

A letter from one requestor states that Dr. Peerwani is the owner of Forensic Consultants of Fort Worth, Anatomic and Forensic Pathologists, and Arlington Enterprises. The requestor seeks all documents "in the custody of the Medical Examiner's Office or Nizam Peerwani M.D., P.A., that relate to business transactions between any of those companies and the Medical Examiner's Office, Tarrant County, Denton County, Parker County, or the P.A." Dr. Peerwani submitted an affidavit to this office stating that the named companies are private partnerships.

Public information is information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by or for a governmental body. Gov't Code § 552.002. However, chapter 552 does not require a governmental body to obtain documents that are in the possession of private individuals or other entities, when the governmental body does not have a right of access to such information. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed w.o.j.) (official could not be compelled to produce documents not in his possession). We agree that the county is not required to produce information that it does not possess. As information held by the named businesses appears to be the information for which you asserted section 552.110, we need not address your section 552.110 arguments.

A request was made for records showing Dr. Peerwani's income. Among the information submitted to this office was sample income tax information. Section 552.101 of the Open Records Act excepts from disclosure information made confidential by law, either constitutional, statutory, or by judicial decision. The income tax information is confidential under section 552.101, in conjunction with federal law. We note that Form W-4, the Employees' Withholding Allowance Certificate, income tax returns, Form W-2, which reports wages, and Form W2-P, which reports pension benefits, are all confidential by federal law. See Open Records Decision No. 600 (1992) at 8-9.

You have also asserted that section 552.101 protects from disclosure information concerning compensation paid to Dr. Peerwani. However, information showing the amount of compensation paid by the county to Dr. Peerwani or other office employees is not protected from disclosure under a right of privacy as protected under section 552.101. Open Records Decision No. 455 (1987).

You assert that section 552.107(1) protects from disclosure the remaining information that is at issue. Section 552.107(1) excepts from disclosure communications that reveal client confidences or the attorney's legal opinion or advice. Open Records Decision Nos. 589 (1991) at 1, 574 (1990) at 3, 462 (1987) at 9-11. The records submitted to this office are not protected from disclosure pursuant to section 552.107(1).

You also assert that section 552.107(2) protects information from disclosure. Section 552.107(2) provides that information is excepted from disclosure if "a court by order has prohibited disclosure of the information." *See* Open Records Decision No. 415 (1984) at 2. You submitted to this office a protective order issued March 9, 1995, by the 236th Judicial District. However, it does not appear that the information submitted to this office is covered by this protective order.

You assert that section 552.103(a) protects the submitted records from disclosure. You have submitted to this office information showing that the county is involved in litigation. The petitions submitted to this office allege, in part, wrongful death and negligence involving the Tarrant County Medical Examiner's Office. To secure the protection of section 552.103(a), a governmental body must also demonstrate that requested documents "relate" to the pending litigation. *See* Open Records Decision No. 551 (1990).

You have not shown how the budget information for the Tarrant County District Attorney's Office is related to the pending litigation. We agree that the other sample documents submitted to this office are related to the litigation and may be withheld from disclosure pursuant to section 552.103(a).¹

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 101851, 33215, 33325, 33525, 33617

Enclosures: Submitted documents

¹We note, however, that once information has been obtained by all parties to the litigation or the litigation concludes, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982).

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