



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 10, 1997

Mr. Roland Castenada
General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR97-0047

Dear Mr. Castenada:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102970.

The Dallas Area Rapid Transit ("DART") received a request for a variety of information, including information about a particular accident, involving a bus, in which a pedestrian was killed. You submitted to this office as responsive to the request internal documents concerning the accident. You also submitted medical records and autopsy records of the deceased individual, which were provided to DART by the attorney for the deceased individual's family. It is your contention that the internal documents are protected from disclosure pursuant to section 552.103(a) of the Government Code and that the medical and autopsy records are confidential by law, pursuant to section 552.101 of the Government Code.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the 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. You have shown that litigation is reasonably anticipated. Our review of the documents at issue shows these records are related to the anticipated litigation. Thus, you may withhold the internal records for which you assert the section 552.103(a) exception.

We note, however, that once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). You may withhold the records at issue that the opposing party to the anticipated litigation has not seen or had access to. The applicability of section 552.103(a) also ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Section 552.101 of the Government Code exempts from required public disclosure information considered to be confidential by law. Access to the medical records at issue is governed by provisions of the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. Section 5.08(b) and (c) of the MPA provide:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

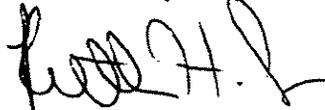
(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(1) provides for release of medical records upon the written consent of a "personal representative" if a patient is deceased, when such written consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Also, section 5.08(j)(3) requires that any subsequent release of medical records be consistent with the purposes for which DART obtained the records. Open Records Decision No. 565 (1990) at 7. Thus, access to the medical records at issue is not governed by chapter 552 of the Government Code, but rather provisions of the MPA, Open Records Decision No. 598 (1991).

We note, however, that the autopsy report is expressly made public under section 11, article 49.25 of the Code of Criminal Procedure. It thus may not be withheld from disclosure under section 552.101.

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 may 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# 102970

Enclosures: Submitted documents

cc: Mr. Brett Shipp
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(w/o enclosures)