



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 27, 1997

Ms. Joanne Wright
Associate General Counsel
Texas Department of Transportation
DeWitt C. Greer State Highway Building
125 E. 11th Street
Austin, Texas 78701-2483

OR97-0434

Dear Ms. Wright:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 104009.

The Texas Department of Transportation (the "department") received a request from an employee for "any and all documentation you have in your files concerning me." You assert that the records requested are related to pending litigation and thus are excepted from disclosure pursuant to section 552.103(a) of the Government Code.

We note initially that the medical and health information at issue is generally confidential pursuant to federal law. In Open Records Decision No. 641 (1996), this office determined that medical information obtained pursuant to the Americans with Disabilities Act of 1990 (the "ADA") 42 U.S.C. § 12101 *et seq.*, is confidential. *See also* 29 C.F.R. §1630.14(b)(1) (providing that medical information "shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record"). We will address your section 552.103(a) argument concerning the other records at issue.

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 pending, and our review of the documents at issue shows these records are related to the anticipated litigation. 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).

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,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', written in a cursive style.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 104009

Enclosures: Submitted documents

cc: Mr. John Sitton
2901 S. Main
Lindale, Texas 75771
(w/o enclosures)