



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 9, 1997

Mr. Edward H. Perry
Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR97-1074

Dear Mr. Perry:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 105665.

The City of Dallas (the "city") received a request for a copy of the "medical audits" relating to a claim filed against the city by Guadalupe Hernandez, the requestor's client. You assert that the information is excepted from disclosure pursuant to sections 552.103 and 552.111 of the Government Code. We have considered your arguments and have reviewed the information submitted.

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

In Open Records Decision No. 638 (1996), this office held that a governmental body could establish that litigation is reasonably anticipated for purposes of chapter 552 of the Government Code if it received a notice of claim which it represented to this office complies with the applicable statute or municipal ordinance. In this instance, the city has met this test. Therefore, we conclude that litigation is reasonably anticipated. After reviewing the submitted documents, we conclude that they are related to the anticipated litigation. Consequently, the city may withhold the requested information under section 552.103(a) of the Government Code.¹

¹As we resolve your request pursuant to section 552.103 of the Government Code, we need not address your argument under section 552.111.

We note however, that 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). In addition, 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.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 105665

Enclosures: Submitted documents

cc: Mr. Allen Rad
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(w/o enclosures)