



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 10, 1997

Mr. Ray Rike
Assistant District Attorney
Tarrant County
Justice Center
401 West Belknap
Fort Worth, Texas 76196-0201

OR97-2263

Dear Mr. Rike:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 109311.

Tarrant County (the "county") received a request for the personnel files of two former employees. The requestor specifically seeks "personal employment data, benefits information and educational courses and seminars attended." The requestor is an attorney who represents the two former employees. You explain that you will release the employees' personnel files to the requestor. You contend, however, that two other files may be responsive to the request: these files concern the employees' workers' compensation claims. You argue that these files, marked as exhibit C, may be withheld from required public disclosure by sections 552.101, 552.103, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The county 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.

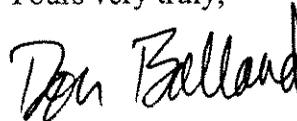
App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The county must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you advise this office that the county is currently involved in pending litigation. You have provided the petitions in these cases. *Moyer v. Tarrant County, et al.*, No. 141-168565-97 (141st Dist. Ct., Tarrant County, Tex., April 7, 1997); *Van Sickel v. Tarrant County, et al.*, No. 141-168567-97 (141st Dist. Ct., Tarrant County, Tex., April 24, 1997). You explain that these cases involve the workers' compensation claims of the employees who are the subject of this request. We find that litigation is pending and that the documents you seek to withhold are related to the pending litigation. You may withhold the documents in exhibit C under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, 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). Because we make a determination under section 552.103, we do not address your additional arguments against disclosure.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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

¹We note, however, that some of the requested information is governed by the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. The MPA protects from disclosure "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." V.T.C.S. art. 4495b, § 5.08(b); Open Records Decision No. 598 (1991). The MPA provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. The medical records submitted to this office for review may only be released as provided by the MPA. Gov't Code § 552.352 (distribution of confidential information is criminal offense).

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Enclosures: Submitted documents

cc: Mr. Ricky G. Bunch
Foreman, Boudreaux, Smith & Johnson
Walnut Glen Tower, Suite 1150
8144 Walnut Hill Lane, Lock Box 62
Dallas, Texas 75231-7661
(w/o enclosures)

