



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 16, 1998

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
Office of the City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR98-0155

Dear Mr. Toscano:

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# 112562.

The City of Dallas (the "city") received two requests for information regarding an independent audit of certain medical records. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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.

You claim that litigation is reasonably anticipated because a claim for damages has been submitted to the city. The claim relates to the audit which is the subject of this request for information. Under Open Records Decision No. 638 (1996), a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney and (2) stating that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA") or applicable municipal statute or ordinance.

You have submitted to this office a notice of claim against the city and a letter from an attorney representing the individual who filed the claim. You represent that notice of claim "conforms with the requirements of Chapter XXIII of the Dallas City Charter." We find that you have shown that litigation is reasonably anticipated. Open Records Decision No. 638 (1996). We have also reviewed the records, and our review shows that they are related to the anticipated litigation. Thus, you may withhold the requested information pursuant to section 552.103(a).

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 anticipated 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).

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/ glg

Ref.: ID# 112562

Enclosures: Submitted documents

cc: Ms. Linda Davis
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