



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 8, 1998

Ms. Lorna R. Jones  
Assistant County Attorney  
Harris County  
1001 Preston, Suite 634  
Houston, Texas 77002-1891

OR98-0928

Dear Ms. Jones:

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# 113910.

The Harris County Hospital District (the "district") received a request for "[a]ll documents involving charges, lawsuits or complaints against the Harris County Hospital District for mishandling or mismanagement of drugs at the Lyndon B. Johnson Clinic and/or Ben Taub Hospitals during the years 1994, 1995, or 1996." You have submitted a representative sample of the requested information for our review.<sup>1</sup> You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, and 552.111 of the Government Code.<sup>2</sup>

Initially, you argue that the documents in folder A are not responsive to the request. We note that the request for information is broad in scope. It also appears that the documents submitted are responsive to the request. Therefore, we will address your claimed exceptions.

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup>The requestor also seeks copies of any settlement agreements entered into by the district as a result of these charges, lawsuits or complaints. You inform us that the district entered into a settlement agreement with the Department of Justice. You do not indicate that you seek to withhold the information concerning the settlement agreement. Therefore, we presume that this information has been released to the requestor.

The district claims that the documents in folder A are excepted from disclosure under section 552.103 of the Government Code. Section 552.103(a) of the Government Code 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 district 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 district must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you state that the district is involved in litigation brought by two pharmacy employees who both allege that they were terminated for their participation in a criminal investigation. You have also submitted copies of the relevant pleadings. We conclude that litigation is pending and that the documents submitted by the district are related to the litigation for the purposes of section 552.103(a). The documents in folder A may, therefore, be withheld 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).

The district contends that the documents in folder B are also excepted from disclosure under section 552.103(a). You state that the district has also been sued in federal court by two former employees. You argue that since the plaintiffs allege, among other things, that they were accused of mishandling drugs, the district should be able to withhold information relating to pharmacy management procedure problems under the litigation exception. We disagree. After reviewing the pleadings and the documents at issue, we do not believe that

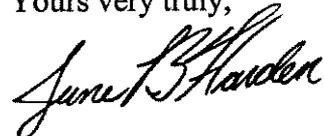
the documents relate to the litigation. The district, therefore, may not withhold the contents of folder B pursuant to section 552.103(a).

The district also contends that certain information in folder B is excepted from disclosure under section 552.111. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 (1993) at 4-5. After reviewing the documents at issue, we agree that most of the information you have marked is protected from disclosure under section 552.111. We have marked the information that must be released to the requestor.

Finally, the district asserts that one document is confidential as a matter of law. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 161.032(a) of the Health and Safety Code makes confidential the "records and proceedings of a medical committee." "Medical committee" includes any committee of, among other entities, "a medical organization" and "an extended care facility." Health & Safety Code § 161.031(a). You explain that the district appointed an ad hoc committee to investigate and review allegations of non-compliance with state and federal laws on controlled substances. You raise section 161.032(a) for information that appears to have been obtained from this committee. We agree that you may withhold this information under section 161.032(a). The remaining information in folder B must be released to the requestor.

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,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/alg

Ref.: ID# 113910

Enclosures: Marked documents

cc: Ms. Beatrice Mladenka-Fowler  
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(w/o enclosures)