



March 17, 1999

Mr. J. Greg Hudson
Bickerstaff, Heath, Smiley, Pollan, Keever & McDaniel, L.L.P.
1700 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701-2443

OR99-0758

Dear Mr. Hudson:

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# 122893.

The Montgomery County Hospital District (the "district") received a request for district financial statements and budget documents. You have supplied the responsive information for our review, contending that it is excepted from disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

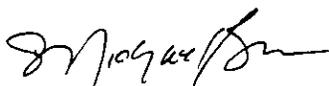
We note that, pursuant to Government Code section 552.303(c), by letter dated December 31, 1998, our office notified you that a copy of the petition in the underlying case was required to render a decision responsive to your request for opinion. We have not received the requested petition. Pursuant to Government Code section 552.303(e), the responsive information is therefore presumed public. You have not urged, nor does the information on its face suggest, a compelling reason to overcome this presumption.

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. A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). You

represent that the requestor is the party adverse to the district in a suit styled *Montgomery County Hospital District v. Columbia Hospital Corporation*, numbered 97-10-04088, and filed in the 359th Judicial District Court of Montgomery County, Texas. By this representation you have demonstrated that litigation is pending. However, you have not supplied any information regarding the nature of this litigation or how the responsive information relates to this litigation. As we have no basis for determining the relatedness of the responsive information to the litigation, we conclude that you have not met the burden required to except this information from public disclosure under section 552.103 of the Government Code. It must therefore be released.

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.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 122893

Enclosures: Submitted documents

cc: Mr. Rick King
Conroe Regional Medical Center
504 Medical Center Blvd.
Conroe, Texas 77304
(w/o enclosures)