



September 7, 1999

Ms. Katherine Minter Cary
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR99-2491

Dear Ms. Cary:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128023.

The Sexual Assault Prevention and Crisis Intervention Division of the Office of the Attorney General ("OAG") received a request for "all non-exempt correspondence, monitoring reports, and other documents arising from such reports and correspondence related to the Grayson County Women's Line, aka Women's Crisis Center" ("WCC"). You seek to withhold the requested information under sections 552.101, 552.103, 552.107, 552.108, 552.111, and 552.116 of the Government Code.

Section 552.101 requires withholding, *inter alia*, information made confidential by statute. You advise that some of the information responsive to the request consists of documents produced pursuant to a civil investigative demand issued by the Charitable Trusts Section of the OAG's Consumer Protection Division. You contend that provisions of the Texas Miscellaneous Corporation Laws Act - V.T.C.S. article 1302-1.01 *et seq.* - make such information confidential. Article 1302-5.03 authorizes the attorney general to "make investigation into the organization, conduct and management of any corporation . . . authorized to do business in this state," "to inspect and examine any of its said books and records, and other documents" and to make copies of documents which "in his judgment may show or tend to show said corporation has been or is engaged in acts or conduct in violation of its charter rights and privileges, or in violation of any law of this State." Article 1302-5.04 provides:

The Attorney General, or any of his assistants or representatives, shall not make public or use said copies of any information derived in the course of said examination or said records or documents, except in the course of some judicial proceedings in which the State is a party, or in a suit by the State to cancel the permit or forfeit the charter of such domestic or foreign corporation, or to collect penalties for a violation of the laws of this State, or for information of any other officer of this State charged with the enforcement of its laws.

Having reviewed the information at issue (your item 12), we conclude that you must withhold it pursuant to article 1302-5.04.

Section 552.103(a), known as the litigation exception, excepts from required public 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.

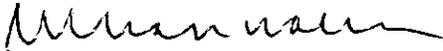
To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You contend all of the requested information may be withheld under section 552.103(a) since it relates to a lawsuit the Charitable Trust Section of the OAG's Consumer Protection Division intends to file as a result of its investigation of the WCC. In our opinion, you have established that the information at issue relates to anticipated litigation. Consequently, information responsive to the request other than your item 12 -- which, as discussed above, we have found you must withhold under the provisions of the Texas Miscellaneous Corporation Laws Act -- may be withheld at this time under section 552.103(a).

Please note, however, that absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent the opposing parties have seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a). Similarly, section 552.103(a) does not authorize withholding materials which have already been made available to the public. Open Records Decision No. 436 (1986). The applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982), Open Records Decision No. 350 (1982).

Since we have disposed of this request under sections 552.101 and 552.103, we do not address your other claimed exceptions to disclosure. 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,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 128023

Encl. Submitted documents

cc: Ms. Dorothy N. Fowler
Sherman Herald Democrat
603 S. Sam Rayburn Parkway
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(w/o enclosures)