



January 7, 2000

Ms. Elaine S. Hengen
Assistant City Attorney
Office of the City Attorney
City of El Paso
2 Civic Center Plaza - 9th Floor
El Paso, Texas 79901

OR2000-0087

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130897.

The City of El Paso (the "city") received a request for all records from the city's Police Department pertaining to an incident at 865 North Resler which occurred on September 21, 1999. You have provided this office with copies of the information the city has released to the requestor. You claim, however, that the remaining information requested is excepted from disclosure under sections 552.101, 552.103, 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

You contend that the documents submitted as Exhibits C and D are excepted from disclosure under section 552.103. Section 552.103(a) of the Government Code, as amended by the Seventy-sixth Legislature, reads in pertinent part as follows:

¹We 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.

(a) Information is excepted from the requirements of Section 552.021 if it is information relating to litigation of a civil or criminal nature 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[.]

Section 552.103(a) was intended to prevent the use of the Public Information Act as a method of avoiding the rules of discovery in litigation.² Attorney General Opinion JM-1048 at 4 (1989). The litigation exception enables a governmental body to protect its position in litigation by requiring information related to the litigation to be obtained through discovery. Open Records Decision No. 551 at 3 (1990).

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990).

In Open Records Decision No. 638 (1996), this office stated that a governmental body may demonstrate that it reasonably anticipates litigation if it receives a notice of claim letter and represents to this office that the letter is in compliance with the requirements of the Texas Tort Claims Act, Civ. Prac. & Rem. Code, ch. 101, or an applicable municipal ordinance or statute. You provided this office a copy of the letter received by the city which you claim complies with the Texas Torts Claims Act and the applicable city ordinances. We, therefore, conclude that litigation is reasonably anticipated and that the submitted information is related to the litigation for the purposes of section 552.103. You may withhold the information in Exhibits C and D 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 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). However, some of the records contain information that is confidential by law which must not be released even at the conclusion of the litigation. Gov't Code §§ 552.101, .352.

²The Public Information Act is not a substitute for the discovery process under the Texas Rules of Civil Procedure. See Attorney General Opinion JM-1048 at 3 (1989) ("the fundamental purposes of the Open Records Act and of civil discovery provisions differ"); Open Records Decision No. 551 at 3-4 (1990) (discussion of relation of Open Records Act to discovery process).

You have also submitted confidential medical records for our review. 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.” Occ. Code § 159.002(b); *see* Open Records Decision No. 546 (1990) (because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). We have marked the documents that may only be released as provided by the MPA. Open Records Decision No. 598 (1991); *see* Occ. Code § § 159.002(c), 159.004, 159.005.

You also claim that some of the documents contain Texas drivers’ license numbers which are exempt from disclosure under section 552.130. Section 552.130 governs the release and use of information obtained from motor vehicle records. This office has determined that Texas drivers’ license numbers, license plate numbers, and vehicle identification numbers are categories of information that are excepted from disclosure under section 552.130.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Rose-Michel Munguía
Assistant Attorney General
Open Records Division

RMM/jc

Ref: ID# 130897

Encl. Submitted documents

cc: Ms. Evelina Ortega
521 Texas Avenue
El Paso, Texas 79901
(w/o enclosures)