



September 4, 2002

Ms. Sarajane Milligan
Assistant County Attorney
Harris County
2525 Holly Hall, Suite 190
Houston, Texas 77054

OR2002-4953

Dear Ms. Milligan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168104.

The Harris County Hospital District (the "district") received two requests for information regarding the medical records of Richard H. May. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted any information responsive to the aspect of both requests that seeks certified copies of log sheets, invoices, receipts, or other documents verifying any release of Richard H. May's medical records. Further, although you argue that the district is not required to provide the requestors with certified copies, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to this aspect of both requests exists, we assume that you have released it to both requestors. If you have not released any such information, you must release it to the requestors at this time. *See* Gov't Code §§ 552.301(a), .302.

Next, we note that the requestors ask the district to draft a letter or an affidavit containing certain information, including the exact number of pages in Richard H. May's medical file. It is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to create or prepare new information. *See* Attorney General Opinion JM-672 (1987), H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982),

87 (1975). Furthermore, the Act does not require a governmental body to answer factual questions or perform legal research. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). A governmental body must only make a good faith effort to relate a request to information that it holds. *See* Open Records Decision No. 561 at 8 (1990).

The requestors in this instance are not seeking access to information that the district maintains—i.e., the medical records themselves. Instead the requestors ask that the district produce a new document. We therefore agree that the portion of the requests that seeks the number of pages within Richard H. May's medical file exceeds the scope of the Act, and you do not need to comply with this aspect of the requests.

The requestors also seek the names of all parties who have requested and/or been granted access to Richard H. May's medical records, the dates that access to the medical records was granted, and the number of copies released to those granted access to the medical records. We will now address your claimed exceptions with respect to the submitted information, which is responsive to this aspect of the request. Section 552.103 of the Government Code provides as follows:

(a) Information is excepted from [required public disclosure] 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.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

A governmental body 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. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *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 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

You state that Robert F. Crunk was convicted and is serving a sentence for the assault and shooting of Richard H. May. You explain, and provide documentation showing, that Mr. Crunk is currently involved in a pending habeas corpus suit in the United States Court for the Southern District of Texas regarding that conviction. Based on your representations and our review of the submitted court docket sheet, we conclude that you have shown that litigation was pending on the date the district received the present request for information. However, the district would not be a party to this litigation. Consequently, the district has no section 552.103 interest in information related to the pending litigation. *See* Open Records Decision No. 392 (1983).

In this type of situation, we require an affirmative representation from the governmental body that would be a party to the litigation that it wants the requested information withheld from disclosure under section 552.103. You state that Karyl Krug, the Assistant Attorney General representing the State of Texas in this matter, has indicated that the submitted information should be withheld from disclosure because release of such information would impede the case. On this basis, we conclude that the first prong of the section 552.103 test has been met. Further, upon review of the submitted information, we find that the information relates to the pending litigation for purposes of section 552.103. Therefore, the submitted information may be withheld from the requestors at this time pursuant to section 552.103(a) of the Government Code.¹

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 pending 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).

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.

¹As we are able to make this determination, we need not address your remaining claimed exceptions.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 168104

Enc: Submitted documents

c: Mr. Kenneth Malone, Associate
ACLU Prison and Jail Accountability Project
ACLU of Texas, Inc.
P.O. Box 132047
Houston, Texas 77219
(w/o enclosures)

Mr. Roberth Morrow
Ms. Vicky Baltz
Hocker, Morrow & Sterling
6630 Cypresswood Drive, Suite 200
Spring, Texas 77379-7701
(w/o enclosures)