



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 20, 2003

Mr. J. Greg Hudson
Thomas Hudson & Nelson, L.L.P.
3305 Northland Drive, Suite 301
Austin, Texas 78731

OR2003-1130

Dear Mr. Hudson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176755.

The Montgomery County Hospital District (the "district"), which you represent, received a request for the following information:

- (1) Any settlement agreements to which the District has been a party within the last ten years;
- (2) Any releases of liability to which the District has been a party within the last ten years;
- (3) Any report, audit, evaluation, or investigation made of, for, or by the District's Indigent Care Committee within the last ten years;
- (4) All "Indigent Registries" or "Indigent Roles" [sic] for the past 10 years;
- (5) Any documents listing or identifying indigent Montgomery [C]ounty inhabitants within the past ten years;
- (6) All documents used by the District in determining or certifying the status of persons as an indigent under the terms of the Indigent Care Agreement dated May 26, 1993;

(7) All documents used by the District to issue "Indigent Identification Cards" or "Patient Identification Cards" under the terms of the Indigent Care Agreement dated May 26, 1993; [and]

(8) All documents produced to the district by any of [three other named] entities in response to discovery propounded in civil litigation[.]

You claim that some of the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.¹

We first note that some of the requested information is subject to section 552.022 of the Government Code. Section 552.022 provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(18) a settlement agreement to which a governmental body is a party[.]

Gov't Code § 552.022(a)(1), (18). Section 552.103 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. As such, section 552.103 is not other law that makes information confidential for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (governmental body may waive litigation exception). We have marked a sample of the type of information that is subject to section 552.022 and thus may not be withheld from disclosure under section 552.103. As you raise no other exception to the disclosure of the information that is subject to section 552.022, it must be released.

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district to withhold any information that is substantially different from the submitted information. *See Gov't Code § 552.301(e)(1)(D)*: Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Next, we address your claim under section 552.103 of the Government Code with respect to the rest of the requested information. Section 552.103 provides in part:

(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.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) that litigation was pending or reasonably anticipated on the date of its receipt of the request for information *and* (2) that the information at issue is related to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); *see also* Open Records Decision No. 551 at 4 (1990). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *Id.*

You state, and have provided documentation demonstrating, that the district was a party to a pending lawsuit when this request for information was received. You also represent to this office that the requested information relates to the pending litigation. Based on your representations, your supporting documentation, and our review of the submitted information, we conclude that you have demonstrated that section 552.103 is applicable in this instance.

In reaching this conclusion, we assume that the district does not now seek to withhold any information that the opposing parties in the pending litigation have seen or to which they have already had access. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to the litigation to obtain the information through discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). If the opposing parties to pending litigation have seen or had access to information that relates to the litigation, through discovery or otherwise, then there is no interest in now withholding that information from public disclosure under

section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). You inform us that the requestor, as an attorney for the opposing parties in the pending lawsuit, has already had access to much of the requested information. The district may not now withhold, under section 552.103, any information to which the requestor has had access. We also note that the submitted information includes the minutes of a meeting of the district's board of directors. The district must release that information. *See* Open Records Decision No. 511 at 5 (1988) (citing Open Records Decision No. 221 (1979)) (statutory predecessor to section 552.103 does not under any imaginable circumstances protect minutes of school board's public meeting). The rest of the submitted information that is not subject to section 552.022 is excepted from disclosure at this time under section 552.103. We note that the applicability of section 552.103 ends when the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the district must release the information that is subject to section 552.022. The district also must release the minutes of the board meeting. The district may withhold the rest of the information at this time under section 552.103.

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).

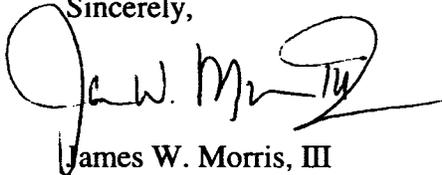
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "W".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 176755

Enc: Submitted documents

c: Mr. Jack W. Higdon
Abrams Scott & Bickley, L.L.P.
700 Louisiana, Suite 1000
Houston, Texas 77002-2727
(w/o enclosures)