



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 12, 2010

Ms. Elizabeth Lutton
Senior Attorney
Dallas County Sheriff's Department
133 North Industrial Boulevard, LB-31
Dallas, Texas 75207-4313

OR2010-00579

Dear Ms. Lutton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 367355.

The Dallas County Sheriff's Department (the "sheriff") received a request for all documents regarding the requestor and all documents from the three years prior to the request regarding incidents in which a Parkland Health and Hospital System ("Parkland") nurse was injured in the Dallas County Jail. You state you have no responsive documents regarding injuries to a nurse at the jail.¹ You claim that the submitted witness statement is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention that the sheriff waived its exception under section 552.103 by previously allowing Parkland access to the submitted witness statement. We note that section 552.007 of the Government Code prohibits selective disclosure of

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

information. Thus, a governmental body cannot withhold information from a requestor that it has voluntarily made available to another member of the public unless the information is confidential by law. *See id.* § 552.007(b). As a general rule, therefore, if a governmental body releases information to any member of the public, the Act's exceptions to disclosure are waived unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Open Records Decision Nos. 490 (1988), 400 (1983). We note, however, that Parkland, also known as the Dallas County Hospital District, is a governmental body subject to the Act. *See generally* Gov't Code § 552.003 (stating in pertinent part that institution that spends or that is supported in whole or in part by public funds constitutes "governmental body" for purposes of the Act.). In Open Records Decision No. 661 (1999) this office determined that whether a governmental entity may release information to another governmental entity is not generally a question under the Act, as the Act is concerned with the required release of information to the public. *See* Gov't Code §§ 552.001, .002, .021; Open Records Decision No. 655 (1997). This office has long recognized that it is the public policy of this state that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of statutory duties. *See, e.g.*, Attorney General Opinion H-836 (1976); Open Records Decision No. 655; *but see* Attorney General Opinions DM-353 at 4 n. 6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated entities), JM-590 (1986) (same); Open Records Decision No. 655 (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). In adherence to this policy, this office has acknowledged that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 655, 414 (1984). A state agency's transfer of information to another entity that is subject to the Act does not generally constitute a release of the information to the public for purposes of section 552.007 of the Act. *See, e.g.*, Attorney General Opinions H-917 at 1 (1976), H-242 at 4 (1974); *see also* Gov't Code §§ 552.007, .352. We therefore find that providing the witness statement at issue to Parkland did not constitute a release to the public for purposes of section 552.007 and does not prevent the sheriff from claiming that this information is excepted from disclosure under section 552.103 of the Government Code.

Section 552.103 of the Government Code 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 sheriff 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) that litigation was pending or reasonably anticipated on the date of the receipt of the request for information and (2) that the information at issue is related to the pending or anticipated litigation. *Univ. of Tex. Law Sch. v. Tex. 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). The sheriff must meet both prongs of this test for information to be excepted under section 552.103(a).

The purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. See Gov't Code § 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). You state the requestor filed a discrimination complaint with the Equal Employment Opportunity Commission ("EEOC"). This office has stated that a pending EEOC complaint indicates that litigation is reasonably anticipated. See Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). We note that the sheriff is not a party to these proceedings and, therefore, does not have a litigation interest in the matter for purposes of section 552.103. In such a situation, we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103. You have provided such a representation from Parkland. However, you state the sheriff received the request for information on October 21, 2009. The requestor states, and provides documentation showing, that her EEOC complaint was filed on October 30, 2009. Accordingly, we conclude Parkland has not established that it reasonably anticipated litigation when the sheriff received the request for information. Therefore, the sheriff may not withhold the information on behalf of Parkland under section 552.103 of the Government Code. As you raise no other exception to disclosure, the submitted witness statement must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and

responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Mack T. Harrison". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/rl

Ref: ID# 367355

Enc. Submitted documents

c: Requestor
(w/o enclosures)