



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 12, 2010

Ms. Nneka C. Egbuniwe
Deputy General Counsel
Parkland Health and Hospital System
5201 Harry Hines Boulevard
Dallas, Texas 75235

OR2010-10240

Dear Ms. Egbuniwe:

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# 386206.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district") received a request for the following information related to certain named individuals, including board managers, executive officers, and members of the medical staff and surgery department:

1. All titles, positions, offices, dates of employment, and salaries[; and]
2. Signed personal commitment and certification contracts[.]

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

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.

submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We first address your assertion that the instant request for information is redundant of other recent requests made to the district by this requestor and others. Generally, section 552.232 of the Government Code outlines the procedures a governmental body must follow in responding to a repetitious or redundant request *from the same requestor*. *Id.* § 552.232. Upon review, we note that in this instance the majority of the requested information is not precisely the same information that was previously requested and released in response to related requests. Additionally, although you provide documentation showing that a portion of the information at issue in the current request was previously requested, we note that the present requestor is not the same individual that previously requested the information at issue from the district. Accordingly, you have failed to establish that this is a repetitious or redundant request for purposes of the Act. Thus, we will address your arguments against disclosure of the submitted information.

We note that the documents you have submitted indicate that some of the information responsive to the instant request was previously released to the public. The Act does not permit selective disclosure of information to the public. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *but see* Open Records Decision Nos. 579 (1990) (exchange of information among litigants in "informal" discovery is not "voluntary" release of information for purposes of statutory predecessor to Gov't Code § 552.007), 454 at 2 (1986) (governmental body that disclosed information because it reasonably concluded that it had constitutional obligation to do so could still invoke statutory predecessor to Gov't Code § 552.108). Although you seek to withhold the requested information under section 552.103 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *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 Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). As such, section 552.103 neither expressly prohibits the release of information to the public nor makes information confidential under law. Therefore, to the extent that the district has previously voluntarily released any of the requested information to a member of the public, the district may not now withhold any such information from the present requestor under section 552.103.

Next, we note portions of the submitted information are subject to section 552.022 of the Government Code. This section provides, in pertinent part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]

Gov't Code. § 552.022(a)(2). In this instance, portions of Exhibit B reveal the titles, positions, offices, dates of employment, and salaries of district employees and officers. This information is subject to section 552.022(a)(2) of the Government Code, and must be released unless it is confidential under other law. You argue this information is excepted from disclosure by section 552.103 of the Government Code. As previously noted, section 552.103 is a discretionary exception to disclosure that a governmental body may waive. *See Dallas Area Rapid Transit*, 4 S.W.3d at 475-76; ORD 665 at 2 n.5, 663 at 5. As such, section 552.103 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(2). Therefore, none of the responsive information encompassed by section 552.022(a)(2) may be withheld under section 552.103. However, we will address your argument under section 552.103 for the remaining information that was not previously released and is not subject to section 552.022.

Section 552.103 of the Government Code provides in relevant part 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.

Gov't Code § 552.103(a), (c). 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 was pending or reasonably anticipated on the date that the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Thomas*

v. Cornyn, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

To establish that litigation is reasonably anticipated, a governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body’s receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.² Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be “realistically contemplated”). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982).

You state the district has a reasonable belief that litigation will ensue between it and a named individual based on correspondence with the individual and the individual’s attorney. You assert that the individual, a former medical resident in the district’s residency program, and his attorney have sought “information regarding the professional liability coverage afforded [the individual] as a [district medical] resident, ‘including information on how to submit claims.’” You state that the individual “and his attorney have indicated a belief that [the district] should be liable for payment required for his legal defense against a dispute allegedly arising out of his residency.” However, you do not provide, and the submitted information does not reveal, any concrete evidence showing that the individual or his attorney actually threatened to file a lawsuit against the district or otherwise took any objective steps toward filing suit prior to the district’s receipt of the request. Accordingly, you failed to demonstrate the district reasonably anticipates litigation, and the district may not withhold any portion of the remaining information under section 552.103. As you raise no other exception to disclosure, the submitted information must be released to the requestor.

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.

²Among other examples, this office has concluded that litigation was reasonably anticipated where the opposing party took the following objective steps toward litigation: (1) filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); (2) hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and (3) threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 386206

Enc. Submitted documents

c: Requestor
(w/o enclosures)