



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 15, 2010

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

OR2010-10516

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# 386791.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district") received a request for certain "consultation handbooks" and the contracts of certain specified groups of personnel, from 2004 to the present. You state the requested "consultation handbooks" do not exist in the district's records.<sup>1</sup> We note you have redacted portions of the submitted information under section 552.117 of the Government Code pursuant to section 552.024(c)(2) of the Government Code.<sup>2</sup> You claim the remaining requested information is excepted from disclosure under section 552.103 of the Government

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<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>Section 552.024(c)(2) of the Government Code allows a governmental body to redact the current and former home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code* § 552.024(c)(2). As you have already redacted this information, we need not address your claim under section 552.117.

Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>3</sup>

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*. Gov't Code § 552.232. Upon review, although you provide documentation showing that some of the documents at issue in the current request were previously requested, we note the present requestor is not the same individual that previously requested the documents 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.

Next, we note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-09346 (2010). We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, to the extent the requested information is identical to that previously ruled upon by this office, the district may continue to rely on Open Records Letter No. 2010-09346 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information was not previously requested and ruled upon by this office, we will address your argument against disclosure of the information.

Next, we note most of the submitted information is 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:

...

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<sup>3</sup>We 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.

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). In this instance, the submitted information contains a signed contract that is related to the expenditure of public funds. This information, which we have marked, is subject to section 552.022(a)(3) of the Government Code. Therefore, this information must be released under section 552.022 unless it is confidential under other law. You argue this information is excepted from disclosure by section 552.103 of the Government Code. However, section 552.103 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *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. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022(a)(3). Therefore, the district may not withhold the contract we have marked under section 552.103. As you raise no other exception to the disclosure of the information subject to section 552.022, it must be released. However, we will address your argument under section 552.103 for the information that 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.<sup>4</sup> 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). Further, the fact a potential opposing party has hired an attorney who makes a request for information does not establish litigation is reasonably anticipated. *See* Open Records Decision No. 361 (1983).

You state the district has a reasonable belief that litigation will ensue between the district 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 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. *See* Gov't Code § 552.301. 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.

In summary, to the extent the requested information is identical to that previously ruled upon by this office, the district may continue to rely on Open Records Letter No. 2010-09346 as a previous determination and withhold or release the identical information in accordance with that ruling. The remaining requested information must be released.

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<sup>4</sup>Among 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 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](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,



Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/tp

Ref: ID# 386791

Enc. Submitted documents

c: Requestor  
(w/o enclosures)