



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2010

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

OR2010-10667

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# 387136.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district") received a request for twenty five categories of information. You state that the district has no information responsive to categories 2, 4, 7, 11, 18, 21, 22, 24, and 25 of the request.¹ You also state that, as permitted by section 552.024(c) of the Government Code, you will redact information subject to section 552.117 of the Government Code.² You claim the remaining information is excepted from disclosure under sections 552.103, 552.107, 552.108, 552.111, 552.136 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.³ We

¹We 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 dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body. Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. See Gov't Code §§ 552.117, .024(c).

³We 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.

have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note the district has not submitted information responsive to category 16 of the request. To the extent any information responsive to this portion of the request existed on the date the district received the request, we assume the district has released it. If the district has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we 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 most of the documents at issue in the current request were previously requested, we note the present requestor is not the same individual who 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 most of the requested information was the subject of two previous requests for information, in response to which this office issued Open Records Letter Nos. 2010-09884 (2010) and 2010-10240 (2010). We have no indication the law, facts, or circumstances on which these prior rulings were based have changed. Accordingly, to the extent the requested information is identical to that previously ruled upon by this office, the district must continue to rely on Open Records Letter Nos. 2010-09884 and 2010-10240 as previous determinations and withhold or release the identical information in accordance with those rulings. *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 arguments against disclosure of the information.

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.⁴ 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 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

⁴Among 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).

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 further exceptions to disclosure of this information, it must be released.

In summary, to the extent the requested information is identical to that previously ruled upon by this office, the district must continue to rely on Open Records Letter Nos. 2010-09884 and 2010-10240 as previous determinations and withhold or release the identical information in accordance with those rulings. The remaining requested information 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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KEH/dls

Ref: ID# 387136

Enc. Submitted documents

c: Requestor
(w/o enclosures)