



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 30, 2012

Lt. Carol Taylor  
Commander  
Communications/Records  
Taylor County Sheriff's Office  
450 Pecan Street  
Abilene, Texas 79602-1692

OR2012-17354

Dear Lt. Taylor:

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# 469483.

The Taylor County Sheriff's Office (the "county") received a request for a list of the items removed from a named individual's possession, a medical log, and a medical dispensing log pertaining to a named deceased individual. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you state a portion of the submitted information was the subject of a previous request for a ruling, in response to which this office issued Open Records Letter No. 2012-11316 (2012). In that ruling, we determined the county must withhold the information we marked in the report subject to section 552.022 under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law, but must release the remaining information subject to section 552.022. We also ruled the county may withhold the information that is not subject to section 552.022(a)(1) of the Government Code under section 552.103 of the Government Code. You do not indicate there has been any change in the law, facts, and circumstances on which the prior ruling was based. We therefore conclude the county must rely on Open Records Letter No. 2012-11316 as a previous determination and withhold or release any previously ruled upon information in accordance with the prior 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We address your argument for the information not ruled upon in the prior attorney general ruling. 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). The 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 is pending or reasonably anticipated on the date that the department received the request for information, and (2) the information at issue is related to that 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 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). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* In Open Records Decision No. 638 (1996), this office stated that a governmental body has met its burden of showing that litigation is reasonably anticipated when it received a notice of claim letter and the governmental body represents that the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act ("TTCA"), Civ. Prac. & Rem. Code, ch. 101, or an applicable municipal ordinance.

You inform us that, prior to receipt of the instant request for information, the requestor submitted a notice of claim letter which you state complies with the notice requirements in the TTCA. Based on your representations and our review, we find the county reasonably anticipated litigation on the date of the request. In addition, you state the information at issue

is related to the anticipated litigation. Accordingly, the county may withhold the remaining information under section 552.103 of the Government Code.

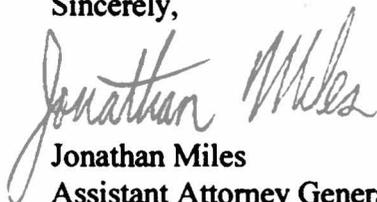
We note, however, once the information at issue has been obtained by all parties to the anticipated litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Further, the applicability of section 552.103(a) ends once the litigation has concluded or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the county must rely on Open Records Letter No. 2012-11316 as a previous determination and withhold or release any previously ruled upon information in accordance with the prior ruling. The county may withhold the remaining information under section 552.103 of the Government Code.

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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/bhf

Ref: ID# 469483

Enc. Submitted documents

c: Requestor  
(w/o enclosures)