

RQ-772



TARRANT COUNTY

OFFICE OF THE  
CRIMINAL DISTRICT ATTORNEY

TIM CURRY  
CRIMINAL DISTRICT ATTORNEY  
817/884-1400

JUSTICE CENTER  
401 W. BELKNAP  
FORT WORTH, TX 76196-0201

*CCW*

June 16, 1994

FILE # ML-27078-94

RECE

Honorable Dan Morales  
Attorney General  
Post Office Box 12548  
Austin, Texas 78711

I.D.# 27078

JUN 20 94

Opinion Committee

By Certified Mail, Return-Receipt Requested.

Re: Open Records Request for documents held by District Attorney in capacity as attorney for County in a matter on which litigation is reasonably anticipated.

Dear General Morales:

A plaintiff's personal injury lawyer, having given notice under the Tort Claims Act that amounts to a threat of suit on behalf of his clients such that litigation is reasonably anticipated, has made an Open Records Request to the District Attorney for documents clearly relating to the anticipated suit. (Attachment A) We have timely responded. (Attachment B).

We respectfully request that you rule that no further response is required by us to this requestor.

History. On May 17, 1994, the Requestor, in his capacity as an attorney, dispatched notices of claims under the Texas Tort Claims Act. He alleges that his client was injured while in the custody of the juvenile law enforcement agency. The documents submitted by the requestor leave no question that suit is reasonably anticipated on this matter.

Plaintiff's counsel was notified orally by us that we feel the tendered Tort Claims notice requires additional information. Instead of detailing the injuries of his client and the tangible property involved and the alleged manner of injury, Plaintiff made an Open Records Request to the District Attorney's Office for:

Hon. Dan Morales  
June 16, 1994  
Page 2

"any and all written and photographic information concerning Mr. Guillermo Salazar and the injuries he sustained as a result of the November 18, 1993."

First, the request is a global "any and all" request, much as one sees in litigation. As such, it does not comply with the Act's requirement that the requestor specify which documents he seeks.

Second, the documents in the possession of the District Attorney which would respond to the request are those assembled in the attorney file in our capacity as attorney to County departments subsequent to receipt of the tort claims notice by the attorney-requestor. The first matter in the file is the Notice filed by the Attorneys; our file was opened after that time. Everything else was compiled by our civil division on or after that time in an attempt to investigate the threatened suit.

As attorneys for the County, we are always hopeful that matters can be reasonably resolved amicably between the parties, and it is not wholly impossible that the matter could resolve without suit if the attorney submits a reasonable claim that is well documented as to his client's medical condition and damages. However, it would be negligent indeed for us to look at the notices sent by counsel and conclude that suit is not reasonably anticipated. We have reviewed the file and feel that all of the requested documents should be withheld from public disclosure at this time to protect our client's position in the anticipated litigation. Any discovery disputes, which we do not detail here, should be resolved by the trial judge.

In response to his request letter, our office called the Requestor and advised him that, as his Tort Claims notice makes very clear that litigation is reasonably anticipated, it is our office's position that the documents requested are all exempt from disclosure under the Texas Open Records Act.<sup>1</sup> Because we believe that the threat of litigation should be obvious to any good faith reviewer, our civil division requested that the requestor-attorney consider withdrawing his request so that it would not be necessary for our office to expend the time to

---

<sup>1</sup>The attorney, separately, requested medical documents but failed to provide a release that complies with the Texas Medical Practices Act. Counsel has been advised in writing that medical records will be released if he provides a specific and proper release to the entity that is the custodian of the records.

Hon. Dan Morales  
June 16, 1994  
Page 3

submit this letter-brief to your office. The attorney refused to withdraw the request unless our office agreed to tender to him all documents in the possession of the County that we felt he would be able to obtain in litigation. In effect, he attempted to use the Open Records request as hammer to force voluntary compliance with a litigation-related pre-suit discovery request, thinking we would rather give him documents he is clearly not entitled to under the Open Records Act simply to avoid submitting this question to you. This attempt to use the Act in litigation-related discovery is clearly contrary to the spirit of the law, and is the very sort of tactic that the litigation exception to the Open Records Act is intended to protect against. As your office has previously ruled, the Open Records Act is not to be used to circumvent the discovery process, and was not intended to provide parties to contemplated litigation any earlier or greater access to information than is available in litigation.

It is the opinion of this office that requesting documents from the file of an attorney representing a local government that has been threatened with litigation is wholly beyond the scope of the Open Records Act. The request, in an "any and all" format is global and vague, and fails to satisfy the Open Records Act. As worded, it asks for our entire attorney file. Even in litigation, the requestor could not get that. Loftin v. Martin, 776 S.W.2d 145, 148 (Tex. 1989).

We are tendering the entire civil division attorney file to you (Appendix C) for the Attorney General's review. We believe it is readily apparent that this is not subject to disclosure under the Texas Open Records Act, and we respectfully request that you so rule.

#### Summary

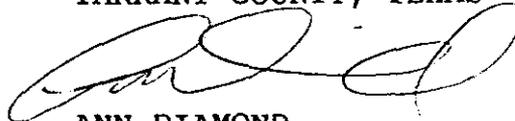
We believe the request is global rather than specific and therefore does not satisfy the requirement that the requestor seek a specific document, and further that the attorney file is exempt from disclosure under § 522.101, 552.103, and 552.108 of the Act.

Hon. Dan Morales  
June 16, 1994  
Page 4

We respectfully request that you rule that no further response need be made by us to the requestor.

Sincerely,

TIM CURRY  
CRIMINAL DISTRICT ATTORNEY  
TARRANT COUNTY, TEXAS



ANN DIAMOND  
Assistant District Attorney  
(817) 884-1233

AD/adp

enclosures:   A    The Request  
                  B    Our Response  
                  C    The documents in issue (the entire attorney  
                          file in the threatened litigation)

cc w/o enclosure:   Mr. Dwain Dent, by certified mail,  
                          return-receipt requested  
                          Mr. Carey Cockerell