



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 15, 1997

Ms. Kate Herrington
Open Records Coordinator
Texas Department of Mental Health
and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR97-1115

Dear Ms. Herrington:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 105677.

The Texas Department of Mental Health and Mental Retardation (the "MHMR") received a request for statements obtained by the MHMR pertaining to the investigation of allegations made against various individuals and the Burnet County Mental Retardation Board.¹ You have submitted for our review the records at issue which you contend should be withheld pursuant to sections 552.101, 552.103, 552.107, 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Because section 552.103(a) of the Government Code is the most inclusive exception you raise, we will discuss it first. To secure the protection of section 552.103(a), the MHMR must demonstrate that the requested information "relates" to a pending or reasonably anticipated litigation to which the district is a party. *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 Nos. 588 (1991) at 1, 551 (1990) at 4. The litigation exception enables a governmental body to protect its position in litigation by requiring information related to the litigation to be obtained through discovery. Open Records Decision No. 551 (1990) at 3.

¹We note that the original request was for the investigative findings concerning allegations made against various individuals and the Burnet County Mental Retardation Board. However, the original request was subsequently modified to request only the statements of certain named individuals.

We have examined the information and documents submitted to us for review. You argue that the submitted records are protected, in their entirety, under section 552.103 of the Government Code, based on a lawsuit styled *Warren v. Texas Department of Mental Health and Mental Retardation*, Cause No. 96-10717, in the 353rd District Court, Travis County, Texas. The lawsuit alleges violations of the Texas Whistleblower Act, among other claims. We also find that the submitted documents are related to the pending or reasonably anticipated litigation for the purposes of section 552.103(a). Therefore, in this instance, MHMR has supplied this office with information indicating that the submitted records relate to pending litigation.

The requested records may be withheld pursuant to section 552.103 only to the extent that the records have not been previously seen by the opposing parties in the anticipated litigation. Generally, absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. We also note that the applicability of this section ends once the litigation has been concluded. Open Records Decision No. 350 (1982) at 3.

As we resolve your request under section 552.103, we need not address your other claimed exceptions at this time. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Sam Haddad
Assistant Attorney General
Open Records Division

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Ref.: ID# 105677

Enclosures: Submitted documents

cc: Ms. Shirley Beaudoin
President, Burnet County Mental Retardation Board
P.O. Box 898
Marble Falls, Texas 78654
(w/o enclosures)