



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 5, 1998

Mr. Don R. Bradley
Attorney, Litigation Section
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-2621

Dear Mr. Bradley:

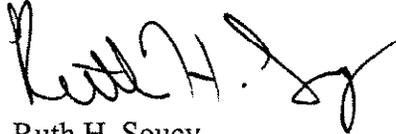
You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119296.

The Department of Health (the "department") received a request for "any and all memorandums received to and/or placed in Cynthia Culmo's performance journal from March 5, 1996, to October 30, 1996." You assert that the memoranda requested are protected from disclosure under section 552.103 of the Government Code. To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (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). You have shown that litigation is pending and our review of the submitted memoranda shows that they are related to the pending litigation.

We note that some of the records were written by or to the opposing party in the pending litigation. Generally, once all parties to the litigation have had access to records, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, you may withhold under section 552.103(a) the memoranda that the opposing party in the pending litigation has not seen or had access to. We also note that the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982), Open Records Decision No. 350 (1982).

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,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 119296

Enclosures: Submitted documents

cc: Mr. Tod E. Pendergrass
Direct Results Legal Service
213 Congress Avenue, Suite 200
Austin, Texas 78701
(w/o enclosures)