



September 20, 1999

Ms. Tina Plummer
Open Records Coordinator
Mental Health and Mental Retardation
P. O. Box 12668
Austin, Texas 78711-2668

OR99-2632

Dear Ms. Plummer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128698.

The Texas Department of Mental Health and Mental Retardation ("MHMR") received a request for information concerning MHMR's decision to provide legal defense or indemnification to a certain individual. You claim that the requested information is excepted from disclosure under section 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the information at issue.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. 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). MHMR must meet both prongs of this test for information to be excepted under section 552.103(a).

You have submitted a copy of the Plaintiff's Original Petition to meet the burden under the first prong of the test. In addition, you have submitted the information that has been requested. We have reviewed the information and agree that the submitted information relates to the pending litigation. Therefore, we find that MHMR may withhold the information from disclosure under section 552.103(a).

In reaching this conclusion however, we assume that neither the plaintiffs nor their attorneys have previously had access to the information at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

As section 552.103 is dispositive, we do not address your 552.107 claim. 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.

Sincerely,



Rose-Michel Munguia
Assistant Attorney General
Open Records Division

RMM/nc

Ref.: ID# 128698

Encl. Submitted documents

cc: Ms. Mary Mishtal
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(w/o enclosures)