



November 2, 1999

Mr. Brian MacLeod
Assistant Public Information Coordinator
Office of Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR99-3094

Dear Mr. MacLeod:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128530.

The Office of the Attorney General (the "attorney general") received an open records request for the following information:

1. How many times in the last five (5) years has the Office of the Attorney General of Texas represented a present or former employee of the State of Texas (hereinafter 'employee') in the employee's personal bankruptcy action or proceeding?
2. How many times in the last five (5) years has the Office of the Attorney General of Texas represented an employee in a bankruptcy adversary proceeding filed against the employee?
3. How many times in the last five (5) years has the Office of the Attorney General of Texas represented an employee in any legal action or proceeding in which the employee was alleged to have engaged in intentional and willful conduct and/or conduct done with the specific intent to cause injury. [sic]

4. Please provide the name and address of each employee, his or her dates of employment, and the case or adversary number for each proceeding in response to requests 1., 2., and 3.

Additionally, please provide copies of all records regarding or relating to the determination made by you or your designee that it was within the interest of the state to indemnify David Bryson, M.D., for the damages alleged in the anticipated adversary proceeding which has been filed by certain of his creditors. . . .

You first contend that request items 1, 2, and 3 listed above are not proper requests for information under the Public Information Act because they “are in the form of questions that request the preparation of answers from” the attorney general. It is well established that the Public Information Act does not require a governmental body to answer factual questions or to, in effect, respond to legal interrogatories. Open Records Decision No. 347 (1982). However, a governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. Open Records Decision No. 561 at 8 (1990). If the attorney general maintains information from which the requested information can be obtained, the attorney general must provide that information to the requestor unless it is otherwise excepted from disclosure. If the attorney general has no such information, chapter 552 of the Government Code does not require a governmental body to make available information which did not exist at the time the request was received. Open Records Decision No. 362 (1983); *see* Open Records Decision No. 452 (1986) (document not within purview of chapter 552 if it does not exist when governmental body receives a request for it). Furthermore, a governmental body is not required to prepare new information in order to respond to a request for information. Open Records Decision Nos. 605 (1992), 572 (1990), 416 (1984).

We now turn to your arguments against disclosure. You contend that the information sought in request items 4 and 5 is excepted from required public disclosure pursuant to, *inter alia*, section 552.103 of the Government Code. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); Open Records Decision No. 588 at 1 (1991). In this instance, you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103.

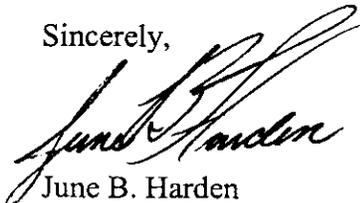
This does not, however, end our discussion on the applicability of section 552.103. In request item 4, the requestor seeks “the name and address of each employee, his or her dates of employment, and the case or adversary number for each proceeding in response to requests 1., 2., and 3.” Some of this information is contained public court documents.

Copies of records that have been filed with a court are not excepted from required public disclosure when held by a governmental official who does not hold those copies as an agent of the court. *Cf.* Open Records Decision No. 513 (1988) (evidentiary information held by district attorney not judicial record merely because information submitted to grand jury); *see also* Gov't Code § 552.022(17) (making "information that is also contained in a public court record" "public information"); *cf.* *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (no privacy interest in information contained in public court records). Accordingly, to the extent that the requested information sought in request item 4 is contained in public court records, that information must be released to the requestor. The attorney general may withhold the remaining requested information pursuant to section 552.103.¹

In reaching this conclusion, however, we assume that the opposing parties in the litigation have not had prior access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103 ends once the litigation has been concluded. 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.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/RWP/ch

Ref.: ID# 128530

¹Because we resolve your request under section 552.103, we need not address the applicability of the other exceptions you raised.

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(w/o enclosures)