



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 26, 2009

Ms. Zindia T. Thomas
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2009-03954

Dear Ms. Thomas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 342269 (PIR No. 09-24346).

The Office of the Attorney General (the "OAG") received a request for e-mails between Yvonne Bennett and Lisa Brown and Bridget Robinson. The OAG states it will release some information and asserts the remainder is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the OAG's claimed exceptions to disclosure and have reviewed the submitted information.

First, we note some of the information was created after the OAG's receipt of the request for information. The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Thus, the information we marked is not responsive to the request and this decision does not address it.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The OAG has

the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (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). The OAG must meet both prongs of this test for information to be excepted under section 552.103(a).

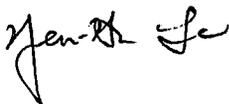
The OAG explains a lawsuit involving the requestor and its client, the Texas Higher Education Coordinating Board, was pending when the OAG received the request for information. Our review of the information shows it is related to the pending litigation. Accordingly, the OAG may withhold the responsive information pursuant to section 552.103.

We note that once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note that the applicability of section 552.103(a) ends when the litigation is concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2 (1982). Because section 552.103 is dispositive, we do not address the OAG's section 552.107 argument.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/eb

Ref: ID# 342269

Enc: Marked documents

c: 1 Requestor
(w/o enclosures)