



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 29, 2009

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2009-18472

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 365966.

The Texas Health and Human Services Commission (the "commission") received a request for copies of e-mails between a named commission employee and the current and former executive commissioner regarding food stamps. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially we note you have submitted information that does not consist of e-mails between the specified individuals. Accordingly, this information, which we have marked, is not responsive to the present request. The commission need not release non-responsive information in response to this request, and this ruling will not address it.

Section 552.103 of the Government Code provides:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

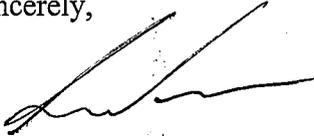
You state, and provide documentation showing, the commission is currently a party to several pending lawsuits alleging the commission failed to timely process food stamps, including: (1) *Stacy J. Howard, et al. v. Albert Hawkins, in his official capacity*, Civil Action No. AU:09-CV-00577-SS, filed in the United States District Court for the Western District of Texas, Austin Division; (2) *Fidelina Valdez-Andrade, et al. v. Albert Hawkins, in his official capacity*, Case No. 4:08-cv-01973, filed in the United States District Court for the Southern District of Texas, Houston Division; and (3) *Rachel Cavazos v. Albert Hawkins, in his official capacity*, Case No. 4:09cv2438, filed in the United States District Court for the Southern District of Texas, Houston Division. Based on your representations and our review, we conclude litigation involving the commission was pending on the date the commission received the present request. We also conclude the responsive information is related to the pending litigations for purposes of section 552.103 because it pertains to the commission's administration of the food stamp program. Therefore, we find the commission may withhold the responsive information under section 552.103 of the Government Code.

We note, however, once the information at issue has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. See Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any information at issue that has either been obtained from or provided to all opposing parties in the pending litigations is not excepted from disclosure under section 552.103(a). Further, the applicability of section 552.103(a) ends once the litigation has concluded. See Attorney General Opinion MW-575 (1982); see also Open Records Decision No. 350 (1982).

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, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 365966

Enc. Submitted documents

c: Requestor
(w/o enclosures)