



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 8, 2011

Ms. Cynthia Villarreal-Reyna
Section Chief
Agency Counsel, Legal & Regulatory Affairs
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2011-04902

Dear Ms. Villarreal-Reyna:

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# 414038 (TDI# 111957).

The Texas Department of Insurance (the "department") received a request for information created after October 14, 2010 relating to: (1) communications discussing proposed changes in the Division of Worker's Compensation's (the "division") process for denial and approval of requests for designated doctor communications; (2) training materials that are used to train division personnel with regard to designated doctor communications; and (3) any communications related to problems with the previous process.¹ You state you have released some information to the requestor. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹We understand the department sought and received clarification of the request. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, we note you have marked parts of the submitted documents as not responsive to the instant request. We also note that some of the submitted information was created before October 14, 2010. This information is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released in response to the request.

Section 552.103 of the Government Code provides as follows:

(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 provide documentation showing that prior to the department's receipt of the request, a lawsuit styled *Indemnity Ins. Co. of North America vs. Candida Jove, and Old Republic Insurance Company, and Texas Department of Insurance (Division of Workers' Compensation)*, Cause No. 10-10523, was filed and is currently pending in the 191st Judicial District Court of Dallas County, Texas. We therefore agree litigation to which the department is a party was pending at the time of the request. You state the pending litigation involves injury disputes regarding various medical claims of an injured worker. You assert the submitted information is related to the pending litigation because it involves information pertaining to designated doctors and letters of clarification at issue in the litigation. Based on your representations and our review of the submitted information, we find the department has established the information at issue relates to the pending litigation. Therefore, the

department may withhold the responsive information under section 552.103 of the Government Code.³

We note 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). Accordingly, the department may only withhold information the opposing party to the litigation has not seen or had access to under section 552.103 of the Government Code. We note the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); 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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 414038

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining arguments.