



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 24, 2014

Mr. Brett Norbraten  
Open Records Attorney  
Texas Department of Aging and Disability Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2014-12880

Dear Mr. Norbraten:

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# 530264 (DADS #s 2014SOLEG0080, 2014SOLEG0084).

The Texas Department of Aging and Disability Services (the "department") received three requests from the same requestor for information pertaining to the requestor's previous applications for employment for a specified period of time, for information concerning specified job positions, and information related to three named department employees. 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 representative sample of information.<sup>1</sup>

Initially, we note you have submitted information pertaining to only a portion of the requests. Although you state you have submitted a representative sample of information, we find the submitted information is not representative of all the information sought in the requests for information. Please be advised this ruling applies to only the types of information you have submitted for our review. Therefore, this ruling does not authorize the withholding of any

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<sup>1</sup>We 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.

other requested records to the extent those records contain substantially different types of information than that submitted to this office. *See id.* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed public). To the extent any information responsive to the remaining items in the request existed and was maintained by the department on the date the department received the request for information, we assume the department has released it. If the department has not released any such information, it must do so at this time. *See id.* §§ 552.301-.302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.103 of the Government Code provides, in relevant part, the following:

(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 claiming section 552.103 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 on the date the governmental body received the request, 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, orig. proceeding); *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 governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). ORD 551 at 4.

You assert the submitted information relates to pending litigation. You state, and provide documentation showing, a lawsuit styled *Finch v. Health and Human Services Commission et al.*, Civil Action No. 4:13-CV-3816, was filed against the department in the Federal District Court for the Southern District of Texas prior to the departments's receipt of the requests for information. Thus, we find litigation was pending against the department at the time it received the requests. Moreover, we find the information at issue is related to the

pending litigation for purposes of section 552.103. Accordingly, the department may withhold the submitted information under section 552.103 of the Government Code.

We note, however, once information has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Further, the applicability of section 552.103(a) ends when the litigation has concluded or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Miriam A. Khalifa  
Assistant Attorney General  
Open Records Division

MAK/akg

Ref: ID# 530264

Enc. Submitted documents

c: Requestor  
(w/o enclosures)