



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 14, 2014

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

OR2014-20771

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# 543253 (DADS 2014SOLEG0141).

The Texas Department of Aging and Disability Services (the "department") received a request for all emails, attachments, and memoranda that include five specified search terms or pertain to the Austin State-Supported Living Center sent to or from four named individuals during a specified time period. You state the department will provide some of the requested information to the requestor. You claim the submitted 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.¹

Section 552.103 of the Government Code provides, in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the

¹We 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.

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 that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate (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 the pending or anticipated litigation. *See 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.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See Open Records Decision No. 551 at 4 (1990).*

You have provided documentation showing that, prior to the receipt of the present request, the United States Department of Justice (the "DOJ") filed a lawsuit against the department and other entities styled *United States of America v. State of Texas*, Cause No. 1:09-cv-00490-SS, in the United States District Court, Western District of Texas, Austin Division. We understand the lawsuit's purpose is to incorporate a settlement agreement between the DOJ and the department, pertaining to federal oversight of the department's system of state-supported living centers, into a judgment enforceable by the court, and the lawsuit remains pending until the terms of the settlement agreement have been satisfied. You inform us the department, at the time of the present request, was engaged in renegotiating the terms of the settlement agreement. You have provided documentation showing the current negotiations are subject to the pending enforcement lawsuit. Based on your representations and our review, we find the department was a party to pending litigation prior to the date it received the request. Further, you state, and we agree, the information at issue relates to the pending litigation because it pertains to changes to the settlement agreement subject to the pending litigation. Accordingly, we conclude the department may withhold the submitted information under section 552.103.²

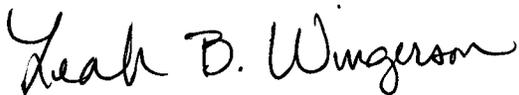
²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

We note once the information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note 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.

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, 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 543253

Enc. Submitted documents

c: Requestor
(w/o enclosures)