



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 4, 2015

Ms. Maureen Franz
Deputy Chief Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2015-18601

Dear Ms. Franz:

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# 578462. Because the ruling request involves litigation to which the Open Records Division is a party, preparation of this ruling has been assigned instead to the Opinion Committee.

The Texas Health and Human Services Commission (the "Commission") received a request for information related to all claims paid by Medicaid above a specified dollar amount during a specified time period.¹ You claim that 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.²

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.

TEX. GOV'T CODE ANN. § 552.103(a), (c) (West 2012). 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 (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, 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.); Tex. Att'y Gen. ORD-551 (1990) at 4. 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, that a lawsuit styled *Texas Health & Human Services Commission v. Ken Paxton*, Cause No. D-1-GN-14-005065, was pending in the 419th Judicial District Court of Travis County, Texas, when the Commission received the instant request for information. We understand the subject of that lawsuit is the extent to which information of a similar type to the information at issue in the instant request is confidential and may not be disclosed by the Commission. You state the information at issue in the instant request is related to the pending lawsuit because it is the same type of information the Commission argues is confidential in the pending lawsuit. Based on your representations, the submitted documentation, and our review of the submitted information, we find litigation was pending when the Commission received this request for information, and the information at issue is related to the pending litigation for the purposes of section 552.103. Therefore, the Commission may withhold the information at issue under section 552.103(a) of the Government Code.

Generally, however, once 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. Tex. Att'y Gen. ORD-349 (1982) at 2, Tex. Att'y Gen. ORD-320 (1982) at 1. Thus, information that has either been obtained from or provided to the opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. Tex. Att'y Gen. Op. No. MW-575 (1982) at 1; Tex. Att'y Gen. ORD-350 (1982) at 3.

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,

A handwritten signature in cursive script that reads "Virginia K. Hoelscher".

Virginia K. Hoelscher
Assistant Attorney General
Opinion Committee

VKH/sdk

Ref: ID# 578462

Enc. Submitted documents

c: Requestor
(w/o enclosures)