



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 8, 2015

Ms. Vicky A. Trompler  
Counsel for Coryell County Memorial Hospital Authority  
Naman Howell Smith & Lee, PLLC  
P.O. Box 1470  
Waco, Texas 76703-1470

OR2015-18654

Dear Ms. Trompler:

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# 578661.

The Coryell County Memorial Hospital Authority (the "authority"), which you represent, received a request for eighteen categories of information pertaining to a specified facility. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code.<sup>1</sup> Additionally, you state release of the submitted information may implicate the proprietary interests of the Fort Worth Southwest Nursing Center (the "center"). Accordingly, we understand the authority notified the center of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

---

<sup>1</sup>Although you also raise the peer review privilege, the hospital committee privilege, the quality assurance privilege, the attorney-client privilege, and the attorney-work-product privilege, you make no arguments to support these privileges. Therefore, we assume you no longer assert these privileges. *See* Gov't Code §§ 552.301, .302.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code, which provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted information includes an executed contract relating to the receipt or expenditure of funds by the authority that is subject to section 552.022(a)(3). The authority must release this information pursuant to section 552.022(a)(3), unless it is made confidential under the Act or other law. *See id.* Although you raise section 552.103 of the Government Code for this information, section 552.103 is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999). Therefore, the authority may not withhold the contract subject to section 552.022(a)(3), which we have marked, under section 552.103 of the Government Code. As you raise no other exceptions to disclosure for this information, it must be released. However, we will consider the authority's argument under section 552.103 of the Government Code for the remaining information.

Section 552.103 of the Government Code provides in relevant part 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). The 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 is 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.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish litigation is reasonably anticipated, a governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” *Id.* In Open Records Decision No. 638 (1996), this office stated a governmental body has met its burden of showing litigation is reasonably anticipated by representing it received a notice-of-claim letter that is in compliance with the Texas Tort Claims Act (“TTCA”), chapter 101 of the Civil Practices and Remedies Code.

The authority states it received a notice-of-claim letter before receiving the request for information and the notice complies with the requirements of the TTCA. Thus, we find the authority reasonably anticipated litigation when it received the request for information. We also find the authority has established the remaining information is related to the anticipated litigation for purposes of section 552.103(a). Therefore, the authority may withhold the remaining information under section 552.103(a) of the Government Code.

However, once the information has been obtained by all parties to the anticipated litigation, 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 has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.<sup>2</sup>

In summary, the authority must release the information we have marked pursuant to section 552.022(a)(3) of the Government Code. The authority may withhold the remaining information under section 552.103(a) of the Government Code.

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.

---

<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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,



Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/cbz

Ref: ID# 578661

Enc. Submitted documents

c: Requestor  
(w/o enclosures)