



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 3, 2016

Ms. Jessica Marsh  
General Counsel  
Texas Civil Commitment Office  
Mail Code 4300  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2016-12665

Dear Ms. Marsh:

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# 612733 (PIA 2016-0009).

The Texas Civil Commitment Office (the "TCCO") received a request for twenty-nine categories of information related to the TCCO treatment program and policies related to the governance of clients housed at the Texas Civil Commitment Center, including the rules the TCCO adopted pursuant to section 841.0831 of the Health and Safety Code. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. You also state you notified Correct Care, LLC dba CCRS ("Correct Care") 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 received comments from Correct Care. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information contains copies of portions of the requested rules found in the Texas Administrative Code. As laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure

under the Act. *See* Open Records Decision Nos. 551 at 2-3 (1990) (laws or ordinances are open records), 221 at 1 (1979) (official records of governmental body's public proceedings are among most open of records). Therefore, the TCCO must release the submitted rules.

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 (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.); ORD 551 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 showing, a lawsuit styled *Brown v. Taylor*, Docket No. 14-50388, was pending against the TCCO and several of its officers and employees in the United States Court of Appeals for the Fifth Circuit, when the TCCO received the instant request for information. You state the submitted information is related to the pending lawsuit. Based on your representations, the submitted documentation, and our review of the remaining information, we find litigation was pending when the TCCO received this request for information, and the remaining information is related to the pending litigation for the purposes of section 552.103. Therefore, the TCCO may withhold the remaining information under section 552.103(a) of the Government Code.<sup>1</sup>

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<sup>1</sup>As our ruling is dispositive, we need not address the TCCO's or Correct Care's remaining arguments against disclosure of this information.

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. Open Records Decision Nos. 349 (1982), 320 (1982). 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. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the TCCO must release the submitted rules. The TCCO may withhold the remaining information under section 552.103 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.

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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/dls

Ref: ID# 612733

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)