



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 30, 1994

Ms. Dennie M. Feldman
Feldman & Associates
12 Greenway Plaza, Suite 1202
Houston, Texas 77046

OR94-883

Dear Ms. Feldman:

On behalf of the Mental Health and Mental Retardation Authority of Harris County, you ask whether certain information is subject to required public disclosure under the Texas Open Records Act chapter 552 of the Government Code. Your request was assigned ID# 23073.

The Mental Health and Mental Retardation Authority of Harris County (the "authority") received an open records request for certain records relating to the facilities operated by the authority and their compliance with the Americans with Disabilities Act, 42 U.S.C. § 121.01 (the "ADA"). You contend that the requested information is excepted from disclosure under sections 552.103(a) and 552.111 of the Government Code.

We agree that portions of the requested information may be excepted from disclosure under section 552.103(a). To secure the protection of section 552.103(a), a governmental body must demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated and that the requested information relates to that proceeding. Open Records Decision No. 555 (1990) at 2. By submitting the petition, you have established that litigation is pending against the authority for violations of the ADA.¹ You claim that all of the requested information relates to that litigation. We note, however, that the pending litigation relates to only one facility in Harris County, while some of the information you submitted for review relates specifically to other facilities. You have made the required showing that all the requested information relates to the litigation except for the information specifically applicable to facilities other than the one at issue in the litigations. You have not explained how the information regarding the other facilities relates to this pending litigation. Therefore, you may withhold under section 552.103(a) all the requested information except the information specifically applicable to facilities other than the one at issue in the litigation.

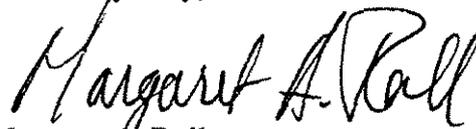
¹For the purpose of this request, the pendency or merit of the motion to dismiss the lawsuit is irrelevant.

In reaching this conclusion, however, we assume that the opposing party in the litigation has not previously had access to the documents at issue and that the litigation is still pending. Absent special circumstances, 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, 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in the requested records, no justification now exists for withholding that information from the requestor under section 552.103(a). Similarly, section 552.103(a) does not justify withhold the information once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We also conclude that two statements in the requested information may be excepted from disclosure under section 552.111. Section 552.111 excepts from required public disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This section protects only those internal agency communications consisting of advice, recommendations, and opinions reflecting the policymaking processes of the governmental body at issue. It does not protect facts or written observations of facts. Open Records Decision No. 615 (1993) at 5. We have reviewed the documents you submitted for review and conclude that most of the information is factual or clearly excepted from disclosure under section 552.103(a). However, the two statements we have marked in the self-evaluation report contained in Exhibit 1 are advice or opinion and are excepted from disclosure under section 552.111. Therefore, if this self-evaluation report is specifically applicable to a facility other than the one at issue in the litigation, you may withhold the two statements we marked under section 552.111.²

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal ruling rather than with a published open records decision. If you have any questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

²We remind you that both sections 552.103(a) and 552.111 are discretionary exceptions. See Gov't Code § 552.007. Therefore, you may choose to release to the public some or all of this requested information.

MAR/JCH/rho

Ref.: ID# 23073

Enclosures: Marked documents

cc: Ms. Helen Malveaux
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(w/o enclosures)