



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 20, 1995

Mr. Burton F. Raiford  
Commissioner  
Texas Department of Human Services  
P. O. Box 149030  
Austin, Texas 78714-9030

OR95-1099

Dear Commissioner Raiford:

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# 32582.

Section 552.103(a) of the Government Code, known as the litigation exception, excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, 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; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

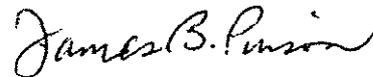
To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. You contend that section 552.103(a) excepts this material from required disclosure because the information relates to a pending lawsuit by the Texas Department of Human Services against Wanda's Personal Care Home. You have provided no further evidence, such a copy of the petition or a reference to a cause number or a court, showing that a lawsuit is actually pending.

Although the evidence of an actual pending lawsuit is slight, our review of submitted records leads us to conclude that a lawsuit at least is reasonably anticipated, if not yet pending. We are of the opinion that the submitted documents relate to reasonably anticipated litigation and may be withheld from required public disclosure under the litigation exception. We assume, however, that none of the information in the records at issue has previously been made available to the opposing party in the litigation. Absent special circumstances, once information has been obtained by all parties to litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent the defendant has seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a).

You also claim that the requested records include information that is excepted from public disclosure as "information considered to be confidential by law" under section 552.101 of the Government Code because the information is protected by constitutional and common-law rights of privacy. Having concluded that all the submitted information may be withheld under the litigation exception, we need not reach this contention.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



James B. Pinson  
Assistant Attorney General  
Open Records Division

JBP/RHS/rho

Ref.: ID# 32582

Enclosures: Submitted documents

cc: Mr. James A. West  
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(w/o enclosures)