



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 26, 1996

Mr. Paul Mascot
Assistant Director, Legal Services
Texas Department of Mental Health
and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR96-0239

Dear Mr. Mascot:

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# 38209.

The Texas Department of Mental Health and Mental Retardation ("TDMHMR") has received a request for information relating to an employment dispute. You state that TDMHMR has released some information to the requester, but contends that certain information is excepted under sections 552.103 and 552.107 of the Government Code.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a).¹ The requested records may therefore be withheld.²

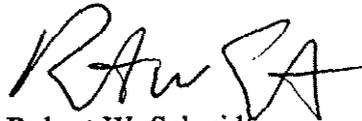
¹The requestor correctly points out that under the Open Records Act, a governmental body must treat all requests for information uniformly, without regard to the identity of the person requesting the information, and may not consider the motives of the requestor. *See* Gov't Code § 552.222(a); Open Records Decision No. 542 (1990) at 4. In the situation at hand, however, the department has provided this office with sufficient, objective, factual information to establish the applicability of section 552.103.

²Because we have found that you may withhold the requested information under section 552.103(a), we do not address your contentions that certain documents may be excepted from disclosure under sections 552.107 and 552.108.

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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

Yours very truly,



Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/ch

Ref: ID# 38209

Enclosures: Marked documents

cc: Ms. Joyce McIntosh
(w/o enclosures)