



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 28, 1998

Mr. Eric M. Bost
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR98-0268

Dear Mr. Bost:

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# 112030.

The Texas Department of Human Services (the "department") received related requests for information pertaining to the "Build A Nutritious Kid" program and for information pertaining to "Dennis Finn, and/or Systems Specialist Inc. [and] Special SNP Pilot Program conducted in 1997 for SNP and selected CACFP Sponsors." You state that the department will provide some of the information. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your claim that section 552.103 excepts from disclosure the information concerning the Build a Nutritious Kid program. Section 552.103(a) applies to 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.

The governmental body has the burden of providing relevant facts and documents to show that 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, and (2) the information at issue is related to that litigation. *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 (1990) at 4. The department must meet both prongs of this test for information to be excepted under section 552.103(a).

In this instance, the Dallas County District Attorney (the "district attorney") has advised this office that the records at issue relate to a criminal matter currently being prosecuted by the district attorney and requests that the records be withheld from disclosure. Therefore, we conclude that the department may withhold the requested information concerning the Build a Nutritious Kid program under section 552.103(a), as the requested information relates to pending litigation. *See* Open Records Decision No. 141 (1976) at 2 (district attorney's determination that requested records relate to possible criminal litigation and should be withheld from public inspection properly invokes applicability of section 3(a)(3)) (construing predecessor statute).

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 party in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. In addition, 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).¹

Section 552.101 of the Government Code excepts from disclosure information that is made confidential by law, including information made confidential by statute. Section 12.003 of the Human Resources Code provides:

(a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, *or any information concerning*, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

(Emphasis added).

¹We caution, however, that some of the information may be confidential by law. Therefore, if the department receives a request in the future, at a time when litigation is no longer pending, the department should seek a ruling from this office before releasing any of the requested information. *See* Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).

In Open Records Decision No. 584 (1991), this office concluded that “[t]he inclusion of the words ‘or any information’ juxtaposed with the prohibition on disclosure of the names of the department’s clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients’ names and addresses.” Consequently, it is the specific information pertaining to individual clients, and not merely the clients’ identities, that is made confidential under section 12.003. *See also* Open Records Decision No. 166 (1977). Assuming that the requestor in this case is not seeking the requested information “for purposes directly connected with the administration of the department’s assistance programs,” we conclude that the department may not release the requested information which is “directly or indirectly derived from the records, papers, files, or communications” maintained by the department. In this instance, some of the submitted documents include information related to clients, applicants, and recipients of the department’s assistance programs. We agree that the information in the submitted records concerning these persons must be withheld pursuant to section 552.101 of the Government Code.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/ glg

Ref.: ID# 112030

Enclosures: Submitted documents

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