



October 17, 2000

Ms. Margaret A. Roll
Assistant General Counsel
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2000-4038

Dear Ms. Roll:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140315.

The Department of Human Services ("DHS") received a request for information regarding the Jobs Partnership of Washington County. You indicate that you will make available to the requestor some of the requested information. You claim that the remaining information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that the submitted information contains some flyers. To the extent that this information has already been made available to the public, it may not now be withheld from disclosure. *See* Open Records Decision Nos. 490 (1988) (governmental body may not practice selective disclosure), 464 (1987).

You inform us that you have provided the requestor with redacted versions of some of the submitted documents. You seek to withhold under section 552.101 of the Government Code the redacted information. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You claim that sections 12.003 and 21.012 of the Human Resources Code make confidential the information you have redacted. 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.]

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* Hum. Res. Code § 21.012 (department shall provide safeguards restricting use or disclosure of information concerning applicants for or recipients of department’s assistance programs to purposes directly connected with administration of programs); Open Records Decision No. 166 (1977). It appears that release here is not for purposes directly connected with the administration of DHS’s assistance programs. Consequently, we agree that you must withhold most of the redacted information from disclosure under section 552.101 in conjunction with section 12.003 of the Human Resource Code.¹ One of the submitted documents, however, does not mention, refer to, or in any way identify clients, applicants, or recipients of public assistance. We do not believe that this document may be withheld under the rationale of Open Records Decision No. 584 (1991). *See* Open Records Decision No. 487 at 5-6 (1988). We have marked the document that is not confidential under section 12.003 and must be released.

You claim that the remaining submitted information is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 states in pertinent part:

(a) Information is excepted from the requirements of Section 552.021 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.

¹We note that individuals have consented to the release of certain information for a limited purpose. We do not believe that such consent acts as a waiver of the statutory confidentiality provisions under sections 12.003 and 21.012 of the Human Resources Code for purposes of the instant open records request.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

You have provided a copy of the Plaintiff's Original Petition in litigation filed on July 24, 2000 against DHS and other defendants. After reviewing your arguments and the submitted documents, we conclude that litigation was pending on the date DHS received the request for information. We also find that the submitted information is related to the pending litigation for the purposes of section 552.103(a). Therefore, the requested information may be withheld from disclosure pursuant to section 552.103, subject to the following exceptions.

Generally, 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 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 been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).²

In summary, you must release to the requestor any information previously made available to the public. With the exception of one document, you must withhold from disclosure under section 552.101 the redacted information you have identified in the documents which have been released to the requestor. Finally, you may withhold the remaining submitted information from disclosure under section 552.103 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

²We caution that some of the information which we determine may be withheld under section 552.103 may be confidential by law. Therefore, if DHS receives a request in the future, at a time when litigation is no longer pending, DHS 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).

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

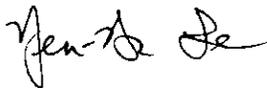
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/ljp