



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2011

Ms. Vanessa A. Gonzales
Allison, Bass & Associates, L.L.P.
402 West 12th Street
Austin, Texas 78701

OR2011-01613

Dear Ms. Gonzales:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 405880.

Reeves County (the "county"), which you represent, received a request for fifty-one categories of information related to the Reeves County Detention Center Complex (the "center").¹ You state that, upon payment from the requestor, the county will release the information responsive to nine categories of the request. You also state the county does not

¹The county sought and received clarification from the requestor regarding twenty-five categories of the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010) (where governmental body seeks clarification or narrowing of request for information, ten-day period to request attorney general opinion is measured from the date request is clarified or narrowed).

have information responsive to one category of the request.² You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. You also state release of this information may implicate the proprietary interests of GEO Group, Inc. ("GEO") and Physicians Network Association, P.A. ("PNA"). Accordingly, you notified GEO and PNA of this request for information and of the companies' rights to submit arguments to this office as to why their requested information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have received comments from GEO and PNA. We have considered the submitted arguments and reviewed the submitted representative sample of information.³ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing an interested party may submit comments stating why information should or should not be released).

Initially, we note there are two pending lawsuits filed against our office: *Reeves County vs. Greg Abbott, as Attorney Gen. of the State of Tex.*, No. D-1-GN-10-000800 (261st Dist. Ct., Travis County, Tex.) and *Physicians Network Ass'n, P.A. v. Greg Abbott, Attorney Gen. for the State of Tex.*, No. D-1-GN-09-001552 (200th Dist. Ct., Travis County, Tex.). *Reeves County* was filed against the Office of the Attorney General over the release of medical complaints at the center from 2007 to 2009. *Physicians Network* concerns records pertaining to audits or accreditation reviews of the center and PNA. Accordingly, to the extent the submitted information is identical to the information at issue in these pending cases, we decline to issue a decision regarding such information and will allow the trial court to resolve the issue of whether this portion of the information at issue must be released.⁴ However, we note that some of the information you claim is at issue in *Reeves County* is from 2010. Such information is outside the scope of the request for information that gave rise to the lawsuit, and thus will not be encompassed by the ruling in that case. We will, therefore, address your claimed exceptions to disclosure of the information.

You claim a portion of the submitted information was the subject of a previous request for information to the county, in response to which this office issued Open Records Letter

²The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the governmental body. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

³We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

⁴As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

No. 2010-13158 (2010). In that ruling, we determined, among other things, that the county may withhold certain records under section 552.103 of the Government Code. You claim some records now submitted to this office were at issue in that ruling and should be withheld under section 552.103 in accordance therewith. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, the information you seek to withhold based on Open Records Letter No. 2010-13158 was created after the issuance of that ruling, and therefore could not have been at issue in that file. Accordingly, the county may not rely on Open Records Letter No. 2010-13158 to withhold any submitted information.

Next, the requestor claims a portion of the requested information was at issue in two prior requests for information to the county, in response to which our office issued Open Records Letter Nos. 2009-17251 (2009) and 2009-13925 (2009). In Open Records Letter No. 2009-17251, we determined the county must release all responsive information to the requestor. In Open Records Letter No. 2009-13925, we determined the county may withhold the marked information pursuant to section 552.108(b)(1) of the Government Code, but the remaining information must be released. We have no indication there has been any change in the law, facts, or circumstances on which these prior rulings were based. Therefore, to the extent the information requested in the current request was also responsive to the requests for information that gave rise to Open Records Letter Nos. 2009-17251 and 2009-13925, the county must rely on those rulings as previous determinations and withhold or release any such information in accordance with the prior rulings.⁵ *See* ORD 673. To the extent the submitted information is not subject to the previous determinations, however, we consider your arguments against disclosure.

First, however, we note you have not submitted any information responsive to category twenty-eight of the request. To the extent information responsive to this part of the request existed on the date the county received the request, we assume it has been released. If not, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This office has repeatedly held that the transfer of confidential information between governmental agencies does not destroy the confidentiality of that information. Attorney General Opinions H-917 (1976), H-836 (1974), Open Records Decision Nos. 561 (1990), 414 (1984), 388 (1983), 272 (1981), 183 (1978). These opinions recognize the need

⁵As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

to maintain an unrestricted flow of information between state agencies. In Open Records Decision No. 561, we considered whether the same rule applied regarding information deemed confidential by a federal agency. In that decision, we noted the general rule that section 552 of title 5 of the United States Code, the federal Freedom of Information Act ("FOIA"), applies only to federal agencies and does not apply to records held by state agencies. ORD 561 at 6. Further, we stated that information is not confidential in the hands of a Texas agency simply because the same information is confidential in the hands of a federal agency. *Id.* However, in the interests of comity between state and federal authorities and to ensure the flow of information from federal agencies to Texas governmental bodies, we concluded that: "when information in the possession of a federal agency is 'deemed confidential' by federal law, such confidentiality is not destroyed by the sharing of the information with a governmental body in Texas. In such an instance, [section 552.101] requires a local government to respect the confidentiality imposed on the information by federal law." *Id.* at 7.

Upon review, we have marked the submitted U.S. Department of Justice Multi-Level Mortality Review reports and their supporting documentation, which are reports provided to the county by the United States Department of Justice's Bureau of Prisons (the "bureau"). You represent, and provide documentation showing, that the bureau considers this information confidential under the deliberative process privilege found in section 552(b)(5) of the United States Code and under the personal privacy provisions found in section 552(b)(6) of the United States Code. *See* 5 U.S.C. § 552(b)(5), (6). The requestor claims the information at issue cannot be withheld in the hands of the county because it does not qualify as "inter-agency material" that qualifies for exemption pursuant to FOIA. However, this office is unable to make determinations as to whether information has been properly withheld by a federal agency under FOIA. Therefore, based on the county's representations and our review, the county must withhold the information we marked under section 552.101 of the Government Code in conjunction with federal law.⁶ *Cf.* Open Records Decision No. 564 at 2 (1990) (this office will accept a governmental body's good-faith determination with respect to questions of fact, which cannot be resolved in the formal decision process).

However, the remaining documents you seek to withhold on this basis appear on their face to be records of the county, not the bureau. As discussed above, information is not confidential under the Act simply because the same information would be protected from disclosure in the hands of a federal agency. *See id.* at 6. We therefore conclude these remaining documents are not confidential records of a federal agency transferred to the county, but rather are the records of the county. Thus the county may not withhold the remaining information based on federal law.

⁶As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

Section 552.101 of the Government Code also encompasses section 161.032 of the Health and Safety Code. Section 161.032(a) makes confidential the “records and proceedings of a medical committee.” Health & Safety Code § 161.032(a). A “medical committee” is defined as any committee, including a joint committee of a hospital, medical organization, university medical school or health science center, health maintenance organization, or extended care facility. *See id.* § 161.031(a). The term also encompasses “a committee appointed ad hoc to conduct a specific investigation or established under state or federal law or rule or under the bylaws or rules of the organization or institution.” *Id.* § 161.031(b).

The precise scope of section 161.032 has been the subject of a number of judicial decisions. *See, e.g., Memorial Hosp.—The Woodlands v. McCown*, 927 S.W.2d 1 (Tex. 1996); *Barnes v. Whittington*, 751 S.W.2d 493 (Tex. 1988); *Jordan v. Fourth Supreme Judicial Dist.*, 701 S.W.2d 644 (Tex. 1986). These cases establish that “documents generated by the committee in order to conduct open and thorough review” are confidential. This protection extends “to documents that have been prepared by or at the direction of the committee for committee purposes.” *Jordan*, 701 S.W.2d at 647-48. However, this protection does not extend to documents “gratuitously submitted to a committee” or “created without committee impetus and purpose.” *Id.* at 648; *see also* Open Records Decision No. 591 (1991) (construing statutory predecessor to section 161.032).

You inform this office portions of the remaining information include documents prepared by PNA’s Quality Improvement Review Committee (the “QI committee”). You explain PNA is a professional association of health care professionals that provides medical services to the center. Thus, we find PNA is a medical organization authorized to form a medical committee pursuant to section 161.032. *See* Health & Safety Code § 161.031(a). You state the QI committee is authorized by PNA “to evaluate the quality of medical and health care services, including the performance of physicians, at [the center].” Based on your representations, we agree the QI committee is a medical committee for purposes of chapter 161. You represent the information you indicated consists of reports and other information prepared by or at the direction of the QI committee, in connection with that committee’s deliberative process in making recommendations to improve the center. Based on these representations and our review of the submitted information, we agree the information we marked consists of records and proceedings of a medical committee. Accordingly, the county must withhold this information under section 552.101 of the Government Code in conjunction with section 161.032(a) of the Health & Safety Code.⁷ However, the remaining information you marked under this provision consists of letters from the center informing various individuals of an inmate’s death. You do not explain how these letters are records of the QI committee, and they may not be withheld under section 552.101 in conjunction with section 161.032.

⁷As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

Section 552.101 also encompasses section 81.046 of the Health and Safety Code. Section 81.046 provides in part:

(a) Reports, records, and information received from any source, including from a federal agency or from another state, furnished to a public health district, a health authority, a local health department, or [the Texas Department of State Health Services] that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under [the Act], and may not be released or made public on subpoena or otherwise except as provided by Subsections (c), (d), and (f).

Id. § 81.046(a), (b). The submitted information includes a monthly report you state was furnished to the Texas Department of State Health Services pursuant to section 81.043(b). Upon review, we find this report is related to cases or suspected cases of diseases or health conditions. However, we note section 81.046 only applies to such reports if they are in possession of a public health district, a health authority, a local health department, or the Department of State Health Services. *See id.* § 81.046(a); *see also* Open Records Decision No. 577 at 2 (1990) (section 81.046 applicable to information “in possession of the health authority”). In this instance, the information is held by the county. Thus, section 81.046 is not applicable to the information you marked, and this information may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part the following:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Although you claim the MPA is applicable to the remaining inmate medical complaints and letters regarding the death of an inmate, you have not shown how this information constitutes communications between a physician and a patient, or contains the identity, diagnosis, evaluation, or treatment of a patient by a physician for purposes of the MPA. Furthermore, we find you have not shown this information was obtained directly from a medical record. We therefore conclude the county may not withhold the submitted inmate medical complaints on the basis of the MPA.

You also raise section 552.101 of the Government Code in conjunction with common-law privacy for the submitted inmate medical complaints. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we marked is highly intimate or embarrassing information of no legitimate public interest. Therefore, the county must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, no portion of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 on the basis of common-law privacy.

Next, we note some of the remaining information is subject to section 552.022 of the Government Code. Section 552.022 provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(13) a policy statement or interpretation that has been adopted or issued by an agency;

(14) administrative staff manuals and instructions to staff that affect a member of the public[.]

Gov't Code § 552.022(a)(1),(3), (13), (14). Upon review, we find the remaining information at issue includes completed reports and evaluations that are subject to section 552.022(a)(1) and a voucher related to the expenditure of public funds by the county that is subject to section 552.022(a)(3). The requestor additionally claims portions of the submitted information are subject to sections 552.022(a)(13) and 552.022(a)(14). However, upon review of the submitted information, we find the information at issue is not subject to section 552.022(a)(13) or section 552.022(a)(14). The county may only withhold the information subject to section 552.022(a)(1) if it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under "other law." Similarly, the county must release this voucher pursuant to subsection 552.022(a)(3) unless it is expressly confidential under "other law." You claim some of the completed evaluations and reports are subject to sections 552.103 and 552.111 of the Government Code. You also claim the voucher is excepted under section 552.111 of the Government Code. However, sections 552.103 and 552.111 are discretionary exceptions that protect a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (statutory predecessor to section 552.111 deliberative process subject to waiver). As such, sections 552.103 and 552.111 do not constitute "other law" that make information confidential for the purposes of sections 552.022(a)(1) and 552.022(a)(3), and the information at issue may not be withheld under those sections. Because information subject to section 552.022(a)(1) may be withheld under section 552.108, we will address the county's arguments under that exception for the information subject to section 552.022. We will also consider the county's arguments under sections 552.103 and 552.111 for the information not subject to section 552.022.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid

detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” See *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded that section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. See, e.g., Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. See, e.g., ORD 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

The information you seek to withhold under section 552.108(b)(1) includes internal policies and procedures of the center you state are not generally known, details about center staff and facilities, and information revealing the center’s response to emergency situations. You contend release of this information would compromise security at the center. Having considered your arguments and reviewed the submitted information, we find you have demonstrated the release of some of the remaining information would interfere with law enforcement and crime prevention. Therefore, the county may withhold this information, which we marked, under section 552.108(b)(1) of the Government Code.⁸ However, we find you have not explained how release of the remaining information, which consists of administrative and statistical information about the center, would interfere with law enforcement. Therefore, no remaining information may be withheld under section 552.108 of the Government Code.

You claim portions of the information not subject to section 552.022 are excepted under section 552.111 of the Government Code. Section 552.111 excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” Gov’t Code § 552.111. This exception encompasses the deliberative process privilege. See Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. See *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

⁸As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. See ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; see also *City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. See Open Records Decision No. 631 at 3 (1995).

Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. See ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. See Open Records Decision No. 313 at 3 (1982). When determining if an interagency memorandum is excepted from disclosure under section 552.111, we must consider whether the agencies between which the memorandum is passed share a privity of interest or common deliberative process with regard to the policy matter at issue. See ORD 561 at 9.

The remaining information you claim is protected by the deliberative process privilege consists of letters from the center regarding inmate deaths, meeting agenda with factual information about the center, an uncompleted audit survey form, correspondence from the bureau advising the center on inadequacies, an adopted administrative policy, and documents entitled "III QCP Schedule." You do not explain how this remaining information contains any advice, opinion, or recommendation of the county. Thus, we conclude you failed to demonstrate the applicability of the deliberative process privilege to this information, and it may not be withheld under section 552.111 of the Government Code.

Next, you seek to withhold some of the remaining information under section 552.103 of the Government Code. Section 552.103 provides in relevant part as follows:

- (a) Information is excepted from [required public disclosure] 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.

Gov't Code § 552.103(a), (c). 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 on the date that the department received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *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 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). The requestor claims any information created after the events that gave rise to the pending lawsuit cannot relate to that lawsuit. We disagree; the fact that information was created after events leading to litigation does not necessarily mean such information cannot relate to litigation, which itself occurs after those events.

You inform this office, and provide documentation reflecting, that prior to receiving this request the county was sued. You explain this lawsuit alleges constitutional violations related to the death of an individual who was incarcerated at the center when he died. You also represent this lawsuit was pending when the county received the request. Based on your representations and our review, we agree litigation involving the county was pending on the date the request was received. You also state the remaining information relates to this pending litigation. Upon review, we marked the portions of the remaining information we find relate to the pending litigation. Thus, the county may withhold the information we marked under section 552.103 of the Government Code. However, we find you have failed to establish the applicability of section 552.103 to the remaining information you seek to withhold under that exception.

Once the information at issue has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. See Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any information at issue that has either been obtained from or provided to all opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. See Attorney General Opinion MW-575 (1982); see also Open Records Decision No. 350 (1982).

Finally, the remaining information includes staffing plans, portions of which GEO seeks to withhold pursuant to section 552.110 of the Government Code. Section 552.110 protects the proprietary interests of private parties by excepting from disclosure two types of information: (1) “[a] trade secret obtained from a person and privileged or confidential by statute or

judicial decision,” and (2) “commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.” *See* Gov’t Code § 552.110(a)-(b).

Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of a “trade secret” from section 757 of the Restatement of Torts, which holds a “trade secret” to be

any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958). This office will accept a private person’s claim for exception as valid under section 552.110(a) if that person establishes a *prima facie* case for the exception, and no one submits an argument that rebuts the claim as a matter of law. *See* Open Records Decision No. 552 at 5 (1990). However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim.⁹ Open Records Decision No. 402 (1983).

⁹The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and others involved in [the company’s] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *See* Open Records Decision No. 661 at 5-6 (1999) (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue).

GEO claims the submitted staffing plans contain trade secrets subject to section 552.110(a). However, the information GEO seeks to withhold pertains to the staffing of the center, and thus has been tailored to suit the county's needs. Such information is generally not a trade secret because it is "simply information as to single or ephemeral events in the conduct of the business," rather than "a process or device for continuous use in the operation of the business." *See* Restatement of Torts § 757 cmt. b (1939); *Huffines*, 314 S.W.2d at 776; ORD 319 at 3, 306 at 3. Thus, we find GEO has failed to show how the staffing plans meet the definition of a trade secret, and the county may not withhold them under section 552.110(a).

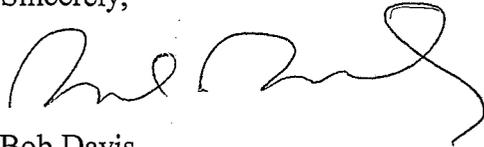
GEO also raises section 552.110(b). Specifically, GEO claims that a competitor could use the staffing plans to reverse engineer GEO's pricing structure for the operation of the center. However, GEO does not provide a specific factual or evidentiary showing demonstrating how its overall pricing structure could be revealed through analysis of individual employees' salaries, hourly wages, and shift information. *See* Open Records Decision Nos. 661 (1999), 509 at 5 (1988), 319 at 3 (1982); *see also* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). Accordingly, the county may not withhold the submitted staffing plans under section 552.110(b).

In summary, to the extent the submitted information is identical to the information at issue in *Reeves County vs. Greg Abbott, as Attorney Gen. of the State of Tex.* and *Physicians Network Ass'n, P.A. v. Greg Abbott, Attorney Gen. for the State of Tex.*, we decline to issue a decision and will allow the trial court to resolve the issue of whether this portion of the information at issue must be released. To the extent the information requested in the current request was also responsive to the requests for information that gave rise to Open Records Letter Nos. 2009-17251 and 2009-13925, the county must rely on those rulings as previous determinations and withhold or release any such information in accordance with the prior rulings. The county must withhold the information we marked under section 552.101 of the Government Code in conjunction with: federal law, section 161.032(a) of the Health and Safety Code, and common-law privacy. The county may withhold the information we marked under sections 552.108(b)(1) and 552.103 of the Government Code. The remaining information must be released.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 405880

Enc. Submitted documents

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