



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 12, 2011

Ms. Cynthia Villarreal-Reyna  
Section Chief - Agency Counsel  
Legal & Regulatory Affairs Division MC 110-1A  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2011-09834

Dear Ms. Villarreal-Reyna:

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# 423543 (TDI No. 114921).

The Texas Department of Insurance, Division of Workers' Compensation (the "department"), received a request for the date the department received a specified complaint and the number of cease-and-desist letters the department has issued concerning alleged misuse of the department's name or logo. You claim the submitted information is excepted from disclosure pursuant to sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that because the requestor only seeks a specified date and number of specified letters issued, the rest of the submitted information is not responsive to this request for information. Therefore, this decision does not address the public availability of the remaining information, which the department need not release in response to this request.

Section 552.103 of the Government Code provides:

(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 department has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date of the receipt of the request for information and (2) the information at issue is related to the pending or anticipated 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 department must meet both prongs of this test for information to be excepted under section 552.103(a).

You claim the responsive information pertains to pending litigation. You state, and have provided documentation showing, a lawsuit styled *John E. Gibson v. Texas Department of Insurance*, Case No. 5:11-cv-39-C, was filed in the United States District Court, Northern District of Texas. Based on your representations and our review, we determine the litigation was pending on the date the department received the request for information. You state the requested date relates to a complaint filed with the department against the plaintiff in the litigation. You further state the requested number of letters relates to issues raised in the pending litigation. Based on your representations and our review, we find the submitted responsive information is related to the pending litigation for the purposes of section 552.103. Accordingly, the department may withhold the responsive information under section 552.103 of the Government Code.<sup>1</sup>

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). Further, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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](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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 423543

Enc. Submitted documents

c: Requestor  
(w/o enclosures)