



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 7, 2011

Mr. Gerry Williams
General Counsel
TDFPS Office of General Counsel
P.O. Box 149030 MC E-611
Austin, Texas 78714-9030

OR2011-12891

Dear Mr. Williams:

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# 429026.

The Texas Department of Family and Protective Services (the "department") received a request for 1) the number of employees of the department, including how many are caseworkers and investigators; 2) the amount of overtime paid to those caseworkers and investigators in the last fiscal year, including a comparison to regular pay and clarification of a specified overtime policy; 3) the number of caseworkers and investigators who have 240 hours of overtime in the bank; and 4) the identity of the non-exempt workers. You state the department has released information responsive to items 1 and 4 of the request. You claim the rest of the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample information.¹

Section 552.103 of the Government Code provides in part the following:

¹We assume that 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.

(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 state, and provide documentation showing, that the department is involved in a lawsuit, styled *Hilda I. Solis, U.S. Department of Labor v. State of Texas, Texas Department of Family and Protective Services, Child Protective Services Division*, Case No. 1:11-cv-469, which was filed against the department and is currently pending in the United States District Court for the Western District of Texas. Based on the submitted information, we conclude the case was filed before the department received the present request. Accordingly, we agree litigation to which the department is a party was pending on the date the department received the present request. Further, we find the information at issue is related to the pending litigation. Thus, we conclude the department may withhold this marked information under section 552.103 of the Government Code.

We note, 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 litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 429026

Enc. Submitted documents

c: Requestor
(w/o enclosures)