



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 6, 2012

Ms. Mary Salluce  
Open Government Attorney  
Texas Department of Family and Protective Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2012-01823

Dear Ms. Salluce:

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# 444529 (DFPS# 2011-0255).

The Texas Department of Family and Protective Services (the "department") received a request for (1) all employment contracts in effect during a specified time period and personnel files for seven named individuals, (2) all documentation indicating obligations owed to the department by six specified entities, and (3) all documentation pertaining to certain department guidelines and policies. You state you referred the requestor to the department website for the requested policy information, and the requestor utilized the website and was satisfied. *See* Gov't Code § 552.228(a); Open Records Decision No. 682 at 7 (2005) (a requestor may agree to accept information on a governmental body's website in fulfillment of the request). You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have only submitted the requested personnel information of one of the named individuals. To the extent the requested employment contracts, personnel files of the remaining six individuals, and documentation indicating obligations owed to the department existed on the date the department received the request, we assume you have released this information. If you have not released such information, you must do so at this time. Gov't Code §§ 552.301, .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 552.103 of the Government Code provides in part the following:

(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, prior to the instant request for information, a petition for Protection of the Children and for Termination in Suit Affecting the Parent-Child Relationship was filed in the district court. You also state the department was granted Temporary Managing Conservatorship of the children at issue. Upon review, 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 the submitted 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](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,

A handwritten signature in black ink, appearing to read 'Nneka Kanu', with a large loop at the end of the name.

Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/em

Ref: ID# 444529

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)