



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 25, 2012

Mr. Christopher Sterner  
Assistant General Counsel  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711

OR2012-08014

Dear Mr. Sterner:

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# 455741 (OOG ID# 083-12).

The Office of the Governor (the "governor's office") received a request for all letters, e-mails, and other correspondence from the public to the governor's office concerning the Medicaid Women's Health Program from March 5, 2012 through March 16, 2012. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. Additionally, you state the requested information may implicate the interests of the Office of the Attorney General (the "OAG"). Accordingly, you have notified the OAG of the request and of its right to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released). We have received comments from the OAG. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note you have marked some of the submitted information as not responsive to the present request. We agree this information is not responsive. This decision does not

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<sup>1</sup>We 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 those records contain substantially different types of information than that submitted to this office.

address the public availability of the non-responsive information, and the governor's office need not release that information in response to this request.

The governor's office claims the submitted information is excepted under section 552.103 of the Government Code, which provides in part:

(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.

*Id.* § 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 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 governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

You state, and the OAG provides documentation showing, the OAG filed suit on behalf of the governor's office and the State of Texas on March 16, 2012, in a case styled *State of Texas v. Kathleen Sebelius, Secretary of the United States Department of Health and Human Services, in her official capacity; United States Department of Health and Human Services*, which is currently pending in the United States District Court for the Western District of Texas. Upon review, we find the governor's office has established litigation was pending on the date it received the request for information. You state the information at issue is related to the pending litigation. Based on your representations and our review, we agree the information at issue is related to the pending litigation for the purposes of section 552.103. Accordingly, the governor's office may withhold the submitted information under section 552.103 of the Government Code.

Generally, however, once information has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to 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 been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 455741

Enc. Submitted documents

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(w/o enclosures)