



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2012

Ms. Jennifer Kaufman
Assistant General Counsel
Texas Medical Board
P.O. Box 2018
Austin, Texas 78768-2018

OR2012-11327

Dear Ms. Kaufman:

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# 459488 (TMB Ref. No. 22415).

The Texas Medical Board (the "board") received a request for information pertaining to a named business.¹ You state you have released some information to the requestor. You state the board is withholding some of the remaining requested information pursuant to the previous determinations issued to the board in Open Records Letter Nos. 2006-14198 (2006) and 2007-03117 (2007).² You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and

¹We note the board received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Open Records Letter Nos. 2006-14198 and 2007-03117 authorize the board to withhold investigatory records pertaining to licensing investigations of an applicant for license as a physician and investigative information that is in the possession of or was received or gathered by the board during the investigation of a license holder, respectively, under section 552.101 of the Government Code in conjunction with section 164.007 of the Occupations Code.

considered comments from the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You raise section 552.103 of the Government Code, which provides, in pertinent 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.

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 the governmental body 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). See Open Records Decision No. 551 at 4 (1990).

You state a lawsuit styled *United Biologics, LLC d/b/a United Allergy Labs v. Texas Allergy, Asthma, and Immunology Society, et al*, Cause No. D-1-GN-11-00242-1, was filed in the 353rd Judicial District Court of Travis County, prior to the board's receipt of this request for the information at issue. You inform us a board employee was named as a defendant in the lawsuit for actions arising from the employee's official board duties. You explain the lawsuit was pending at the time the board received the request for information. You further explain that on January 17, 2012, the board made a formal request for representation in the case by this office. You state the Tort Litigation Division of this office accepted representation of a defendant, the board employee, named in the lawsuit. You state the information at issue relates to the lawsuit. Based on your representations and our review, we find you have established the information at issue is related to litigation that was pending on the date the board received this request for information. Accordingly, we conclude that the

board may withhold the submitted information under section 552.103 of the Government Code.³

We note, however, that 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. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the pending litigation is not excepted from disclosure under section 552.103(a). 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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/sdk

Ref: ID# 459488

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.