



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 25, 2012

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

OR2012-11533

Dear Mr. Davis:

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# 460219 (OOG ID#: 124-12).

The Office of the Governor (the "governor's office") received a request for communications made during a specified time period regarding Planned Parenthood and the Women's Health Program.¹ You state some information has been released. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 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 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. *See* Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

¹You inform us the governor's office sought and received clarification of the request. *See* Gov't Code § 552.222(b) (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 governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

We have received comments from the OAG. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

The OAG raises section 552.103 of the Government Code, which provides, in relevant 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.

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

The OAG provides documentation showing that on March 16, 2012, it filed suit on behalf of the State of Texas, in coordination with the governor's office and other state agencies, 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. The OAG also provides documentation showing it is involved in a lawsuit styled *Planned Parenthood of Austin Family Planning, Inc., et. al. v. Thomas*

²We 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 those submitted to this office.

M. Suehs, Executive Commissioner, Texas Health and Human Services Commission, in his official capacity, which was filed on April 11, 2012, and is currently pending, in the United States District Court for the Western District of Texas. Accordingly, we find the OAG has established litigation was pending on the date the governor's office received the request for information. The OAG states, and we agree, the submitted information relates to the pending lawsuits. Accordingly, the governor's office may withhold the submitted information under section 552.103 of the Government Code on behalf of the OAG.³

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. The governor's office informs us any such information has been released. Further, we note 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, 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/som

³As our ruling is dispositive for the submitted information, we need not address your arguments.

Ref: ID# 460219

Enc. Submitted documents

c: Requestor
(w/o enclosures)
