



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2012

Mr. Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2012-17499

Dear Mr. Aragón:

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# 471482 (HHSC OR-20120912-7245).

The Texas Health and Human Services Commission (the "HHSC") received a request for all communications pertaining to the Women's Health Program ("WHP") from February 23, 2012 to August 30, 2012. You state you have released some of the responsive documents. You claim that the remaining information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially we note a portion of the requested information is subject to a previous ruling from this office. In Open Records Letter No. 2012-11541 (2012), this office reviewed a request for any communications to or from the HHSC commissioner and/or his staff regarding Planned Parenthood and the WHP from March 8, 2012 to the date of the request. This office ruled that the HHSC may withhold the submitted information under section 552.103 of the Government Code. As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, HHSC may continue to rely on the prior ruling as a previous determination and withhold the requested information we have previously ruled on in accordance with Open Records Letter No. 2012-11541. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not

excepted from disclosure). However, because the remaining submitted information is not encompassed by the previous determination, we will address your arguments.

We note some documents are not responsive to the instant request because they were created before the specified period of time in the request received by HHSC. This ruling does not address the public availability of the information that is not responsive to the request, and HHSC is not required to release this information in response to this request.

Section 552.103 of the Government Code provides in relevant part as follows:

(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 purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See id.* § 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) 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 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state the submitted information relates to pending litigation. You state, and provide documentation showing that a lawsuit styled *Planned Parenthood of Austin Family Planning, Inc. v. Suehs*, Civil Case No. 1:12-CV-00322, was filed in the United States District Court for the Western District of Texas, Austin Division, against Thomas Suehs in his official capacity as Executive Commissioner of HHSC prior to HHSC's receipt of the instant request for information. You also state nine Planned Parenthood organizations are involved in the lawsuit, challenging HHSC's administrative rules governing the WHP. Therefore, we find

litigation was pending against HHSC at the time of the request. Further, based on your representations and our review, we find the information at issue is related to the pending litigation. Accordingly, HHSC may withhold the remaining responsive information under section 552.103 of the Government Code.¹

We note, however, once the information at issue has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any information obtained from or provided to all other parties in 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 concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID#471782

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.