



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 5, 2012

Ms. Jennifer M. Covington  
Attorney for Tarrant County College District  
Law, Snakard & Gambill, P.C.  
777 Main Street, Suite 3500  
Fort Worth, Texas 76102

OR2012-19576

Dear Ms. Covington:

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# 472739.

The Tarrant County College District (the "district"), which you represent, received a request for information pertaining to the district's decision to place the requestor on indefinite paid leave on a specified date. You claim 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.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. Section 552.101 encompasses information other statutes make confidential, such as section 611.002 of the Health and Safety Code, which provides in pertinent part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). Upon review, we find Exhibits 6 and 8 consist of mental health records that are subject to chapter 611 of the Health and Safety Code. Accordingly, Exhibits 6 and 8 are confidential under chapter 611 and must be withheld under section 552.101 of the Government Code.

Section 552.103 of the Government Code, which 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 enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See Open Records Decision No. 551 at 4-5 (1990)*. A 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 the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *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.); ORD 551 at 4. A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing that, prior to the district’s receipt of the present request for information, a lawsuit styled *Dr. Kevin Eason v. Tarrant County College District*, Cause No. 348-249935-10, was filed and is currently pending in the 348th District Court of Tarrant County, Texas. Furthermore, you state the remaining information consisting of deposition transcripts taken during this litigation directly relate to the litigation. Therefore, we agree litigation was pending on the date the district received the present

request for information. We also find the remaining information relates to the pending litigation for purposes of section 552.103.

As noted above, however, the remaining information consists of oral depositions taken during trial at the presence of the opposing party and his counsel. Therefore, the opposing party in the pending litigation has seen or had access to the information at issue. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. See ORD 551 at 4-5. Thus, because the opposing party has seen or had access to the depositions, there is no interest in withholding this information from public disclosure under section 552.103. See Open Records Decision Nos. 349 (1982), 320 (1982). Therefore, the remaining information is not protected by section 552.103, and the district may not withhold it on that basis.

In summary, the district must withhold Exhibits 6 and 8 under section 552.101 of the Government Code in conjunction with chapter 611 of the Health and Safety Code. The remaining information must be released.<sup>2</sup>

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>We note the requestor has a special right of access to some of the information being released. Because such information may be confidential with respect to the general public, if the district receives another request for this information from a different requestor, the district must again seek a ruling from this office.

Ref: ID# 472739

Enc. Submitted documents

c: Requestor  
(w/o enclosures)