



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2013

Ms. Thao La
Senior Attorney
Parkland Health and Hospital System
5201 Harry Hines Boulevard
Dallas, Texas 75235

OR2013-06120

Dear Ms. La:

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# 484257 (DCHD#s 13-19, 13-20, 13-33, and 13-35).

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district") received four requests from the same requestor for information pertaining to (1) employees who made public information requests and were terminated, placed on administrative leave, or separated from the district, or employees that were rehired, and related policies or procedures; (2) communications and documents related to policies and procedures involving specified terms related to the Americans with Disabilities Act (the "ADA") and requests for accommodation; (3) "Exit Interview" documents for employees from a specified department that separated from the district during a specified time period; and (4) information pertaining to a specified individual.¹ You state you will release some information. You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, 552.111, and 552.137 of the Government Code. We have

¹You state the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (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 over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the first request for information because it was created after the date the district received this request. Furthermore, the requestor specifically excluded all identifying information of employees who have filed claims under the ADA and those who made public information requests; health or medical information relating to any of the individuals whose records are responsive to the requests; and financial information related to an individual's separation from the district. Thus, these types of information are not responsive. This ruling does not address the public availability of information that is not responsive to the request, and the district need not release non-responsive information in response to the request.³

Section 552.103 provides, in relevant 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). A governmental body has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no

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 that those records contain substantially different types of information than that submitted to this office.

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

pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. See Open Records Decision No. 551 at 4 (1990).

Whether litigation is reasonably anticipated must be determined on a case-by-case basis. See Open Records Decision No. 452 at 4 (1986). To demonstrate litigation is reasonably anticipated, the governmental body must furnish concrete evidence litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* This office has found a pending complaint with the Equal Employment Opportunity Commission (“EEOC”) indicates litigation is reasonably anticipated. See Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982), 281 at 1 (1981).

You state, and provide documentation showing, the requestor’s spouse filed complaints against the district with the EEOC alleging discrimination, retaliation, hostile work environment, constructive discharge, unfair employment treatment, harassment, and intimidation before the date the district received the present requests for information. You state the responsive information relates to the allegations made in the requestor’s spouse’s complaints. Based on your representations and our review, we agree the district anticipated litigation on the dates the district received the present requests for information. We also agree the information at issue is related to the anticipated litigation. As such, we conclude the district may withhold the responsive information under section 552.103 of the Government Code.⁴

We note, however, once the information at issue has been obtained by all parties to the anticipated 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). Further, the applicability of section 552.103(a) ends once the litigation has concluded or is no longer anticipated. 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

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,

A handwritten signature in cursive script that reads "Kathleen J. Santos". The signature is written in black ink and is positioned above the printed name.

Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/som

Ref: ID# 484257

Enc. Submitted documents

c: Requestor
(w/o enclosures)