



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 7, 2016

Ms. Maria Rivera
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2016-27080

Dear Ms. Rivera:

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# 637255 (ORR Nos. 160830-003 & 160830-004).

The Texas Workforce Commission (the "commission") received two requests from the same requestor for information related to the commission's East Texas Board during a specified time period, information related to an investigation of the requestor's client and a specified business during a specified time period, and reports mentioning the requestor's client and the business.¹ You state the commission has previously released some of the requested information to this requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also received and considered comments from the requestor's client. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

¹This office originally assigned identification numbers 637247 and 637255 to these separate requests for a ruling. These requests have been combined and are being issued as one ruling with the identification number noted above.

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 that submitted to this office.

Initially, the requestor's client contends the commission failed to request a ruling within the deadlines mandated by section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). The commission received the original requests for information on August 30, 2016. You state the commission sought and received clarification of the information requested. *See id.* § 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). You also inform us the commission sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See Gov't Code* § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us, and the requestor's client acknowledges, the commission received the required deposit on September 20, 2016. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit). You do not inform us the commission was closed for any business days between September 20, 2016, and October 4, 2016. Accordingly, the commission was required to provide the information required by section 552.301(b) by October 4, 2016. The commission's requests for ruling were postmarked September 30, 2016. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the commission complied with the procedural requirements mandated by section 552.301 of the Government Code. Thus, we will consider your arguments against disclosure of the submitted information.

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 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 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, orig. proceeding); *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 from disclosure under section 552.103(a).

For purposes of section 552.103, “litigation” includes contested cases conducted in a quasi-judicial forum. Open Records Decision Nos. 588 at 2 (1991), 474 at 6 (1987) (disciplinary action before Texas State Board of Pharmacy), 368 at 2 (1983) (administrative hearing before Commissioner of Insurance), 301 at 1-2 (1982). Likewise, “contested cases” conducted under the Texas Administrative Procedure Act, chapter 2001 of the Government Code, constitute “litigation” for purposes of section 552.103. *See, e.g.*, ORD 588 at 7 (State Board of Insurance proceeding), 301 at 2 (hearing before Public Utilities Commission). Factors this office considers in determining whether an administrative proceeding is conducted in a quasi-judicial forum include whether the administrative proceeding provides for discovery, evidence to be heard, factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. *See* ORD 588 at 3-4.

You state, and the requestor's client acknowledges, the submitted information is related to a pending administrative appeal with the commission related to grievances filed against the requestor's client's business with a local workforce development board. We understand in conducting hearings resulting from grievances filed with the commission, the commission follows administrative procedures in handling such disputes. We understand the commission's grievance policy includes a four-step process wherein a commission hearing officer hears the grievance in a closed hearing and then presents his or her findings to the commission's Executive Director, who renders a decision. We understand during these hearings, the parties may request the issuance of subpoenas and are required to exchange documents and witness lists up to five working days before the hearing. We also understand in the hearings, factual questions are resolved and a record is made. Based on your representations and our review, we find the pending grievance hearing constitutes litigation for the purposes of section 552.103 of the Government Code. We also find the information at issue pertains to the complaints filed against the requestor's client's business, which is subject of the grievance hearing, and therefore relates to the pending litigation for purposes

of section 552.103. Therefore, we conclude the commission may withhold the submitted information under section 552.103 of the Government Code.³

However, once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 637255

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

³As our ruling is dispositive, we do not address your remaining arguments against disclosure of the submitted information.