



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 26, 2017

Mr. Brett Norbraten  
Open Records Attorney  
Legal Services  
Texas Health and Human Services Commission  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2017-09174A

Dear Mr. Norbraten:

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# 666163 (ORR# 2017SOLEG0032).

This office issued Open Records Letter No. 2017-09174 (2015) on May 1, 2017. We have examined this ruling and determined Open Records Letter No. 2017-09174 is incorrect. Where this office determines an error was made in the decision process under sections 552.301 and 552.306, and the error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for Open Records Letter No. 2017-09174. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Act.)

The Texas Department of Aging and Disability Services (the "department") received a request from two requestors for sign-in sheets from a specified time period and a specified report. The department claims the submitted information is excepted from disclosure under 552.103 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

Initially, we note the department has not submitted the specified report. Although the department states it has submitted a representative sample of the requested information, we

find the submitted information is not representative of all the types of information to which the requestors seek access. Please be advised, this open records letter ruling applies only to the types of information the department submitted for our review. This ruling does not authorize the department to withhold any information that is substantially different from the types of information it submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Thus, to the extent any additional responsive information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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).

The department states, and provides documentation showing, a lawsuit styled *Harold Gottlieb v. Texas Department of Aging and Disability Services*, Cause No. 2013-69248, was pending against the department in the 269th District Court of Harris County, Texas, when

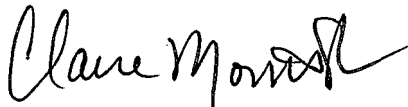
the department received the request for information. Therefore, we agree litigation was pending when the department received the request. The department states the requested sign-in sheets "evidenc[e] the underlying care given to the ward/client [and] are material to the causes of action in the petition[.]" Accordingly, we also find the department has established the submitted information is related to the pending litigation for purposes of section 552.103(a). Therefore, the department may withhold the submitted information under section 552.103(a).

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](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# 666163

Enc. Submitted documents

c: Requestor  
(w/o enclosures)