



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 21, 2017

Mr. Carey E. Smith
Senior Attorney
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2017-18972

Dear Ms. Smith:

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# 671847 (HHSC Reference No. 12861).

The Texas Health and Human Services Commission (the "commission") received a request for nine categories of information relating to a specific term used in the Texas State Medicaid Plan. You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. Additionally, we received comments from the Office of the Attorney General ("the OAG") and requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address the requestor's claim the commission failed to comply with the procedural requirements a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 552.301. 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). In this instance, you state the commission received the request for information on May 31, 2017. You inform us the commission operated on a skeleton crew on June 19, 2017. Accordingly, the commission's ten-business-day deadline was June 14, 2017. The information required by section 552.301(b) was put into interagency mail on June 14, 2017. *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). Although the requestor argues the commission's invoking of sixty-three different exceptions within the Act, including section 552.101, in its ten-day letter does not comply

with section 552.301(b), we note a governmental body need only ask for a decision from this office and *state* the exceptions that apply within ten business days. *Id.* § 552.301(b) (emphasis added). Consequently, we find the commission complied with the requirements of section 552.301 in requesting this decision from our office..

The commission and the OAG raise section 552.103 of the Government Code, which provides 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.

Id. § 552.103(a), (c). 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 (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, 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The commission and the OAG state, and provide documentation showing, a lawsuit styled *State of Texas v. CVS Health Corp.*, Cause No. D-1-GV-14000388, was pending in the 126th Judicial District Court of Travis County, Texas, when the commission received the instant request for information. The commission and the OAG state the submitted information is related to the pending lawsuit. Based on these representations, the submitted documentation, and our review, we find litigation was pending when the commission received this request for information, and the submitted information is related to the pending litigation for the purposes of section 552.103. Therefore, the commission may withhold the submitted information under section 552.103(a) of the Government Code.¹

¹As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); 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.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,



Patrick P. Mehaffy
Attorney
Open Records Division

PPM/eb

Ref: ID# 671847

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)