



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 18, 2020

Ms. Andrea Slater Gulley
Attorney for the Amarillo Independent School District
Walsh Gallegos Trevino Russo & Kyle, PC
6900 I-40 West, Suite 195
Amarillo, Texas 79106

OR2020-20747

Dear Ms. Gulley:

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# 840056.

The Amarillo Independent School District (the "district"), which you represent, received four requests from different requestors for information pertaining to a specified request for proposals. You claim the submitted information is excepted from disclosure under sections 552.103, 552.104, and 552.107 of the Government Code.¹ You also state release of the submitted information may implicate the proprietary interests of Aetna; Ameritas; AmWINS Group Benefits, Inc., d/b/a AmWINS Rx ("AmWINS"); AscellaHealth, LLC ("Ascella"); Blue Cross Blue Shield; Butler Benefits & Consulting; Capital RX, Inc.; Careington International Corporation ("Careington"); CaremarkPCS Health, LLC; CerpassRX; Delta Dental Insurance Company; Express Scripts, Inc. ("Express"); Heritage Health Solutions, Inc.; Keenan & Associates; Lechar Distributors, LLC, d/b/a CastiaRX; Maxor National Pharmacy Services; Prominence HealthFirst of Texas, Inc., and Prominence Health Plan (collectively, "Prominence"); Scott and White Health Plan and SHA, LLC, d/b/a FirstCare Health Plans (collectively, "FirstCare"); TML Health Benefits Pool ("TML"); UMR, Inc. ("UMR"). Accordingly, you state, and provide documentation showing, you notified these interested third parties of the request for information and of

¹ Although you also raise section 552.101 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information. See Gov't Code §§ 552.301, .302. Further, although you also raise Texas Rule of Evidence 503, we note the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code is section 552.107 of the Government Code. See Open Record Decision Nos. 677 (2002), 676 at 1-2 (2002).

their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code §§ 552.304 (interested party may submit comments stating why information should or should not be released), .305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from AmWINS, Ascella, Careington, Express, FirstCare, Prominence, TML, and UMR. We have considered the submitted arguments and reviewed the submitted information.

Section 552.103 of the Government Code 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.

Gov't Code § 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).

You state, and provide documentation showing, a lawsuit styled *Fairly v. Amarillo Independent School District*, Cause No. 109734-D-CV, was pending against the district in the 320th Judicial District Court of Potter County, Texas, when it received the instant request for information. You state the submitted information is related to the pending lawsuit. Based on your representations, the submitted documentation, and our review of the submitted information, we find litigation was pending when the district received this request for information, and the submitted information is related to the pending litigation

for the purposes of section 552.103. Therefore, the district may withhold the submitted information under section 552.103(a) of the Government Code.²

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/mo

Ref: ID# 840056

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Parties
(w/o enclosures)

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.