



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 16, 1996

Mr. Edward T. Laine
Chief
Professional Standards and Administrative Operations
Texas Commission on Law Enforcement Officer Standards
and Education
1033 La Posada, Suite 240
Austin, Texas 78752

OR96-0203

Dear Mr. Laine:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38263.

The Texas Commission on Law Enforcement Officer Standards and Education (the "commission") received a request for information relating to Bid# 407-9210-E7B, a bid concerning leased office space for the commission. You assert that the requested information is excepted from required public disclosure pursuant to section 552.103 of the Government Code. Additionally, you raise "all remaining exceptions" to required public disclosure. You also state that if another agency has disclosed some of the requested documents, the commission will waive the exceptions as to those documents.

Section 552.103(a) applies to information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, 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; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or

quasi-judicial proceeding. Open Records Decision No. 588 (1991). Based on your arguments, we assume that you assert that the requested information relates to reasonably anticipated litigation to which the commission may be a party.

You enclosed a copy of a letter from one of the bidders. The bidder threatens to sue the commission contingent on the commission's rejection of a bid:

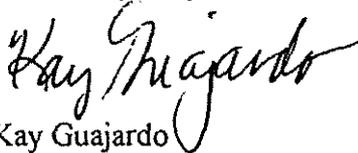
If for any reason the State of Texas should fail to award the Lease on the above captioned Invitation for Bid to the owners of 4930 South Congress Avenue, 4930 South Congress, Ltd., will pursue through all legal remedies any and all economic damages caused by the actions of the above named agencies.

Litigation is reasonably anticipated for purposes of section 552.103 if the potential opposing party has taken steps toward filing a lawsuit. See Open Records Decision No. 555 (1990). The fact alone that a requestor has threatened to sue does not trigger section 552.103. Open Records Decision No. 452 (1986). Accordingly, we conclude that the commission has not established that litigation is reasonably anticipated in this case. Thus, the commission may not withhold the requested information from required public disclosure pursuant to section 552.103 of the Government Code.

You raise "the remaining exceptions." The Open Records Act places on a governmental body the burden of establishing why and how an exception applies to requested information. See Open Records Decision No. 532 (1989) at 1. Consequently, asserting all "remaining exceptions" is not sufficient to establish the applicability of one of the exceptions. Therefore, the Commission may not withhold the requested information from required public disclosure pursuant to any remaining exception.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/ch

Ref.: ID# 38263

Enclosures: Submitted documents

cc: Mr. Wayne A. March CCIM
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(w/o enclosures)