



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 24, 1996

Mr. G. Mike Davis
State Fire Marshal
Texas Commission on Fire Protection
P. O. Box 2286
Austin, Texas 78768-2286

OR96-0600

Dear Mr. Davis:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39674.

You received a request for information concerning an investigation being conducted by your office. You assert that the information at issue is excepted from disclosure pursuant to section 552.103(a) of the Government Code. To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *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 (1990) at 4.

You indicate that the information at issue concerns an active, ongoing investigation that will likely lead to an administrative or judicial hearing. The investigation apparently implicates section 9(a), art. 5.43-3 of the Insurance Code, which provides:

The State Fire Marshall may refuse to issue or renew or may suspend or revoke a certificate of registration, license, or permit if, after notice and hearing, he finds that the applicant, registrant, licensee, or permit holder has engaged in acts:

- (1) that violate this article;
- (2) that violate rules or standards adopted pursuant to this article; or

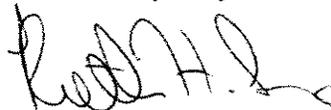
(3) constituting misrepresentation made in connection with the sale of products or services rendered.

License revocation, suspension, or denial hearings are governed by the Administrative Procedures Act (the "APA"), Government Code chapter 2001. *See* Ins. Code art. 5.43-3, § 9(b). For purposes of section 552.103(a), this office considers a contested case under the APA to constitute litigation. Open Records Decision No. 588 (1991) at 7 (construing statutory predecessor to APA). You have shown that litigation is reasonably anticipated.

Our review of the records at issue shows that they are related to the litigation. However, you may not withhold from disclosure under section 552.103(a) all of the records at issue. Many of the records at issue were letters to and from the opposing party in the anticipated litigation. Generally, there is no section 552.103(a) interest once all parties to anticipated litigation have had access to or seen the information at issue, or after the litigation has concluded. Open Records Decision Nos. 349 (1982), 320 (1982). You may, however, withhold from disclosure the records at issue that have not been disclosed to or written by the opposing party.

We are resolving this matter with an 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 should 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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 39674

Enclosures: Submitted documents

cc: Ms. Therese Taylor
Taylor Security Systems, Inc.
5146 Pine Canyon Drive
Smithville, Texas 78957
(w/o enclosures)