



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 3, 1996

Mr. Carl Reynolds  
General Counsel  
Texas Board of Criminal Justice  
P.O. Box 13084  
Austin, Texas 78711

OR96-1578

Dear Mr. Reynolds:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100334.

The Texas Board of Criminal Justice (the "board") received a request for seven categories of information relating to certain keypunching contracts. You claim that the requested information is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claimed and have reviewed the documents at issue.

Section 552.103(a) excepts from disclosure 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.

The board has the burden of providing relevant facts and documents to show that 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, 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. The board must meet both prongs of this test for information to be excepted under 552.103(a).

We note that you received the request for information on March 20, 1996. You state that the board intended to release the information at that time, but a lawsuit was filed on April 18, 1996. You then sought a decision from this office on June 5, 1996 claiming that the records were excepted from disclosure because of pending litigation. You have provided this office with the pleadings in that cause, *Dennis v. Metromail Corporation, et al.*, No. 96-04451 (98th Dist. Ct., Travis County, Tex.). The Open Records Act, however, imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. We realize, nevertheless, that the status of the litigation can determine the applicability of section 552.103(a). Thus, in light of the temporal nature of the applicability of section 552.103(a) and the governmental body's duty to establish the applicability of the exceptions it claims, we believe the act allows a governmental body raising section 552.103(a) to provide this office with information about new and significant developments concerning the anticipated litigation. Open Records Decision No. 638 (1996) at 3.

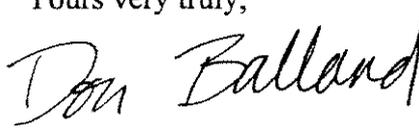
A governmental body, however, must provide to this office these updates concerning the litigation in a timely manner. *Id.* The legislature, recognizing the value of the timely production of public information and the timely rendition of open records rulings, intended that the open records decision-making process move rapidly. See Gov't Code §§ 552.221, .306. Moreover, recent amendments to the act, which became effective September 1, 1995, indicate a strong legislative intent to accelerate the open records decision process. See Gov't Code § 552.301. Thus, we believe a governmental body must submit to this office information about a change in the circumstances of the litigation as soon as possible after the governmental body receives notice of that change. Open Records Decision No. 638 (1996) at 4. In this instance, you learned of a change in circumstance on April 18, 1996, but you did not notify this office until June 5, 1996. We do not believe that this notification was timely or made as soon as possible after the board received notice of the change. We do not believe that the board has met its burden under sections 552.103 or 552.301. Thus, the board may not withhold the requested information pursuant to section 552.103.

In the absence of a demonstration that the information at issue is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. Open Records Decision No. 195 (1978). See Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). See also Gov't Code § 552.352 (the distribution of confidential information is a criminal offense).

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 questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref: ID# 100334

Enclosures: Submitted documents

cc: Mr. J. Blair Richardson, Jr.  
Attorney-at-law  
205 Pennsylvania Ave., S.E.  
Washington, D.C. 20003  
(w/o enclosures)