



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 21, 1997

Ms. Kathleen A. Holden  
Assistant Vice President/Counsel  
Texas Guaranteed Student Loan Corporation  
P.O. Box 201725  
Austin, Texas 78720-1725

OR97-1875

Dear Ms. Holden:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your requests were assigned ID#s 107933 and 108932.<sup>1</sup>

The Texas Guaranteed Student Loan Corporation ("TGSLC") received, from the same requestor, two separate requests for a variety of information "in regard to the Lender of Last Resort Loans made to private vocational schools in South Texas," and "a copy of the proceedings surrounding the resignation of Joe McCormick in early 1992." In response to the requests, you submitted to this office for review the information which you assert is responsive.<sup>2</sup> You seek to withhold the information responsive to the first request pursuant to section 552.103 of the Government Code. In response to the second request for information, you assert sections 552.101, 552.103, and 552.107 of the Government Code.

Initially, we address your contention that "TGSLC is not required to prepare new information or answer questions." You also assert that in response to the first request for information, "because the information sought was not in the form of specific documents, no representative samples are included." We note that when a governmental body is presented with a broad request for information rather than for specific records, it should advise the requestor of the types of information available so that he may narrow or clarify his request. Open Records Decision Nos. 563 (1990), 561 (1990). Furthermore, although the Open Records Act does not require a governmental body to answer factual questions, a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision Nos. 561 (1990), 555 (1990), 379 (1983), 347 (1982). In

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<sup>1</sup>We have combined the two related files, because the same requestor seeks information which you contend relates to the pending litigation for which you have raised section 552.103 as an applicable exception.

<sup>2</sup>You have also submitted to this office information that apparently was sent for informational purposes only. In this ruling, we do not address the public disclosure of that information.

other words, if TGSLC is able to identify documents in its possession from which the requestor could ascertain the answers that he is seeking, TGSLC should provide the requestor access to those documents unless the information is subject to an exception.<sup>3</sup>

Before we consider the application of section 552.103 to the submitted records, we note that for compelling reasons of public policy, some information cannot be withheld from disclosure regardless of its relationship to litigation. Open Records Decision No. 551 (1990). The "litigation exception" cannot be applied to except from disclosure the official records of the public proceedings of a government body. Open Records Decision No. 221 (1979).<sup>4</sup> Alternatively, section 551.104 of the Government Code, a provision of the Open Meetings Act, makes the tape of a properly closed meeting confidential. See Gov't Code §§ 551.104(c) ("The certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)"); see also § 551.146 (public disclosure of certified agenda of meeting that was lawfully closed to public is prohibited); Open Records Decision No. 495 (1988) (Open Meetings Act specifically makes confidential certified agendas or tapes of executive sessions).<sup>5</sup>

The requests for information concern information which TGSLC claims is the subject of a civil lawsuit pending in federal court, styled *Coers, Jr., v. Texas Guaranteed Student Loan Corp., et al.*, No. 93-178 (S.D. Tex. 1993), *appeal docketed*, No. 97-40582 (5<sup>th</sup> Cir. 1997). Therefore, you assert that the submitted information is excepted from required public disclosure under section 552.103. Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is 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

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<sup>3</sup>We note that Chapter 552 of the Government Code does not apply to information that does not exist. See Open Records Decision No. 555 (1990). Nor does chapter 552 require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio, 1978, *writ dismissed*); see also Open Records Decision No. 87 (1975).

<sup>4</sup>Information that a statute other than chapter 552 expressly makes public is not subject to the exceptions to required public disclosure. Open Records Decision No. 623 (1994) at 3. The minutes, tape recordings, and agenda of an open meeting are public records. Gov't Code §§ 551.022 (minutes and tape recordings), .041 (notice), .043 (time and accessibility of notice), .045 (emergency addition to agenda).

<sup>5</sup>However, records that were discussed in a closed meeting and records created in a closed meeting, other than a certified agenda or tape recording, are not made confidential by chapter 551 of the Government Code. Open Records Decision No. 605 (1992).

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). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). We agree with your assertion that the requested information relates to pending litigation. Therefore, we conclude that the requested records may be withheld pursuant to section 552.103 of the Government Code.

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, for example, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Finally, 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). However, you may not release information made confidential by section 552.101 or other law, even after the litigation has concluded. *See Gov't Code § 552.352* (section 552.352 imposes criminal penalties for release of confidential information).

As we resolve your request under section 552.103, we need not specifically address your other claimed exceptions at this time. 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,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/alg

Ref: ID#s 107933 and 108932

Enclosures: Submitted documents

cc: Mr. David H. Coers, Jr.  
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(w/o enclosures)