



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 18, 1997

Mr. Larry E. Littwin
Executive Director
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

OR97-2091

Dear Mr. Littwin:

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# 108683.

The Texas Lottery Commission (the "commission") received a request for information concerning a specific lottery ticket at issue. You claim that the requested records are excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claim 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.

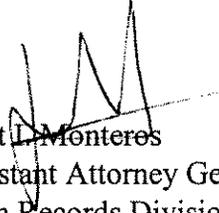
The commission has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related 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 commission must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you claim that the requested information relates to pending litigation involving the commission. You have submitted a petition in the case of *Patsy and Noel Bolander vs. The State of Texas, the Texas Comptroller of Public Accounts, Nora Alicia Linares, Stephen Barber, the Harris County District Attorney, Karen L. Morris and Kim Elaine Whittington*, No. 96-45977 (215th Dist. Ct., Harris County, Tex., April 14, 1997). Our review of the petition reveals that the information requested is at issue in the current suit. Thus, we conclude that litigation is pending and that the requested information relates to the litigation. The commission may therefore withhold the requested information.

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 party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. We further note that 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).

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,


Janet L. Monteres
Assistant Attorney General
Open Records Division

JIM/alg

Ref.: ID# 108683

Enclosures: Submitted documents

cc: Mr. Alden Holford
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(w/o enclosures)