



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 7, 1998

Ms. Eileen Gonzalez, Director
Regulatory and Administrative Operations
Texas Commission on Law Enforcement
6330 U.S. Highway 290 East, Suite 200
Austin, Texas 78723

OR98-1598

Dear Ms. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116511.

The Texas Commission on Law Enforcement, Officers Standards and Education, (the "commission") received a request for all information concerning any complaint filed against a named individual. You claim that this information may be withheld from required public disclosure by section 552.103 of the Government Code. You have submitted a representative sample of the documents you seek to withhold.¹ The request also seeks the commission's "policies and procedures pertaining to complaint investigation and resolution." Because you do not include the commission's complaint procedures in your request for a decision, we presume that this information will be released to the requestor.

Section 552.103(a) exempts 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

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

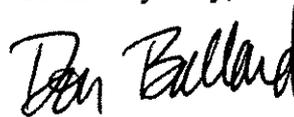
The commission has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related 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 documents relate to litigation that the commission anticipates. You explain that the commission has been "conducting an ongoing investigation . . . that will likely result in the commission taking disciplinary action against [a licensee]." You indicate that the action will involve a contested case before an administrative law judge. Given your assertions, we find that you reasonably anticipate litigation and the requested documents relate to this litigation. *See* Open Records Decision Nos. 588 (1991) at 7 (contested cases conducted under the Administrative Procedure Act, chapter 2001 of the Government Code, are considered litigation under section 552.103), 557 (1990).

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. Further, 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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 116511

Enclosures: Submitted documents

cc: Ms. Susan Henricks
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(w/o enclosures)