



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 28, 1998

Mr. John R. Speed, P.E.
Executive Director
Texas Board of Professional Engineers
P.O. Drawer 18329
Austin, Texas 78760-8329

OR98-2324

Dear Mr. Speed:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118199.

The Texas Board of Professional Engineers (the "board") received a request for information about cases that are pending before the agency or the State Office of Administrative Hearings ("SOAH"). The requestor specifically seeks the names and addresses of individuals who have received notice that (1) a license, permit, or application has been denied, (2) a license or permit is subject to revocation, suspension, or disciplinary action, or (3) there is a contested case proceeding. The requestor also asked for "the date of such notice, the notice of hearing date(s), the location of any hearing, and any information regarding the nature of the violation." You indicate that most of the responsive information in this request was the same information sought in a prior request, and thus was the subject of an earlier ruling from this office, Open Records Letter No. 98-1658 (1998). In that ruling, we agreed that the requested information, during the complaint investigation phase, is confidential pursuant to article 3271a of the Texas Engineering Practice Act (the "Act").

Section 22A of article 3271a requires the board to maintain complaint information as confidential during the investigation stage. By rule, the board has determined that for purposes of maintaining the confidentiality of the complaint information, a complaint investigation is complete when formal charges are filed. 22 T.A.C. § 131.171(d). In accordance with Open Records Letter No. 98-1658 (1998), the board must withhold the records which concern complaint investigations in which no formal charges have been filed.

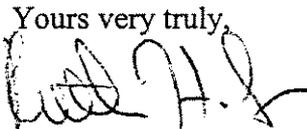
However, you indicate that one of the complaint investigations has proceeded from the investigation stage to the filing of formal charges and a SOAH hearing. You state that the

administrative judge has issued a decision, but that the board has not yet voted on whether to approve or to reject the decision. Section 131.215 of the Texas Administrative Code provides that, at the conclusion of the hearing, the administrative judge's proposal for decision or order must be submitted to the board for adoption. The administrative ruling may be appealed only after the board has rendered its final decision and order. 22 TAC § § 131.220 - 131.222. You assert that, because the board has not yet voted on the proposed decision and order, section 552.103(a) protects from disclosure the requested information about this case.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the 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 at 4 (1990). We agree that you have shown that litigation is pending or reasonably anticipated. Additionally, our review of the information at issue shows that it is related to the litigation. However, once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982).

You submitted to this office a number of documents that have been seen by both parties in the litigation. We note that, by rule, both parties to the administrative hearing are provided a copy of the proposal for decision to the board. 22 TAC § § 131.215(c). Most of the documents submitted may not be withheld from disclosure under section 552.103(a). We have marked several records that do not appear to have been seen by both parties to the litigation. If these marked records have not been seen by the opposing party, they may be withheld from disclosure under section 552.103(a) until the conclusion of the litigation.

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# 118199

Enclosures: Submitted documents
Open Records Decision No. 98-1658

cc: Mr. Kevin A. Blandford
KAB Process
5217 Kings Highway
Austin, Texas 78745
(w/o enclosures; w/Open Records Decision No. 98-1658)