



March 25, 1999

Mr. Christopher R. Scott  
Corporate Counsel  
State Bar of Texas  
P.O. Box 12487  
Austin, Texas 78711-2487

OR99-0843

Dear Mr. Scott:

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# 122294.

The State Bar of Texas (the "Bar") received a request for the following:

All expenses charged to and paid by the State Bar of Texas on behalf of General Counsel Steven Young, Lonny Morrison, Broadus Spivey, and Scott Rothenberg and any Bar outside counsel or staff member in connection with the disciplinary proceedings pending against John O'Quinn, Benton Musslewhite, Charles Musslewhite and Carl Shaw.

You claim that the requested information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the submitted arguments and have reviewed the sample documents.<sup>1</sup>

Section 552.103(a) excepts from disclosure information:

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<sup>1</sup>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.

(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 Bar 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. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *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). The Bar must meet both prongs of this test for information to be excepted under 552.103(a).

You explain that the Bar is currently involved in two pending cases. One is in state district court. *Commission for Lawyer Discipline v. O'Quinn, et al.*, No. 98-06299 (133rd Dist. Ct., Harris County, Tex.). The other is in federal court. *O'Quinn v. State Bar of Tex. Comm'n for Lawyer Discipline, et al.*, No. H-98-3397 (S.D. Tex.). You have shown that litigation is pending. We now examine whether the requested information is related to the pending litigation. "Ordinarily, the words 'related to' mean 'pertaining to,' 'associated with' or 'connected with.'" *Texas Legal Found.*, 958 S.W.2d at 483. You contend that the requested information is related to the subject matter of the lawsuits. You state that "the information has been a hotly contested issue in the lawsuits, with both the Federal Court and State Court issuing orders connected therewith." We have examined your arguments and the submitted documents. You have shown that the requested information is related to the pending lawsuits. The submitted information may be withheld under section 552.103. *Texas Legal Found.*, 958 S.W.2d at 483.<sup>2</sup>

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, if the Bar has been

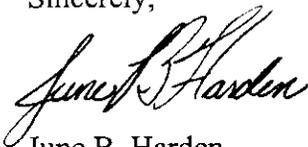
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<sup>2</sup>The requestor argues that this office should reverse its interpretation of the effect of section 552.022. A change of this import and scope would require this office to obtain necessary arguments and briefing from all interested parties and the public. Although this office did not solicit such briefing when it initially received this request for a decision, we would welcome an opportunity to further examine this issue in a future request.

forced to release its expenses to the opposing party, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). *See* Open Records Decision Nos. 349 (1982), 320 (1982). 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).

Because we are able to make a determination under section 552.103, we need not address your section 552.107 claim. 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref.: ID# 122294

Enclosures: Submitted documents

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