



August 19, 1999

Ms. Judy Ponder  
General Counsel  
General Services Commission  
P.O. Box 13047  
Austin, Texas 78711-3047

OR99-2347

Dear Ms. Ponder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127679.

The General Services Commission (the "commission") received a request for information relating to lease procedures, the commission's relationship with other agencies, and compliance with certain laws. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

When asserting section 552.103, a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation. Section 552.103(a) excepts from required public 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.

Gov't Code § 552.103.

Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation is either pending or reasonably anticipated, and (2) the requested information relates to that litigation. *See University of Tex.*

*Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (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).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

In this instance, you explain that the commission is currently involved in litigation. You have provided this office with the petition in the case. After reviewing the submitted material, we find that you have shown that litigation is pending. We also conclude that the records you provided are related to the pending litigation. Thus, you may withhold most of the requested information based on section 552.103(a). However, the copies of statutory and administrative law provisions may not be withheld under section 552.103(a) and must be disclosed. Open Records Decision No. 551 at 2-3 (1990) (laws or ordinances are open records).

In reaching our conclusion here, 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, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also 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.

Sincerely,

A handwritten signature in black ink, appearing to read "Sue M. Lee", with a long horizontal flourish extending to the right.

Sue M. Lee  
Assistant Attorney General  
Open Records Division

SML\nc

Ref: ID# 127679

encl: Submitted documents

cc: Ms. Teresa Neet  
Advocacy Incorporated  
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Austin, Texas 778757-1024  
(w/o enclosures)