



November 10, 1999

Mr. Duncan R. Fox
Assistant Chief
Legal Services
Texas Department of Public Safety
P. O. Box 4087
Austin, Texas 78773-0001

OR99-3209

Dear Mr. Fox:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130422.

The Department of Public Safety ("DPS") received a request for information related to a named trooper's peer review board hearing including the "ballots" of the peer review board. You seek to withhold the requested information under section 552.103 of the Government Code.

Section 552.103(a) of the Government Code, known as the litigation exception, excepts from required public disclosure information

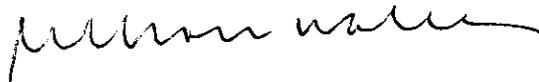
relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party[.]

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). You supply a copy of a petition filed against DPS and certain named employees by the individual to whom the requested information pertains. You advise that this litigation is still pending. Having reviewed the petition, your arguments, and the information at issue, we conclude that the requested information relates to this litigation. Therefore, except as noted below, you may withhold the requested information under section 552.103.

Absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). To the extent the opposing party has seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a). Similarly, section 552.103(a) does not authorize DPS to withhold materials which have already been made available to the public. Open Records Decision No. 436 (1986). The applicability of section 552.103(a) ends once the litigation has 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,



William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 130422

Encl. Submitted documents

cc: Mr. Andrew R. Korn, P.C.
Attorneys and Counselors at Law
Founders Square
900 Jackson Street, Suite 470
Dallas, Texas 75202
(w/o enclosures)