



February 25, 2000

Mr. Scott Gibson
Enforcement Attorney
Texas Board of Architectural Examiners
P.O. Box 12337
Austin, Texas 78711-2337

OR2000-0701

Dear Mr. Gibson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134104.

The Board of Architectural Examiners (the "board") received a request for the response to a complaint made by the requestor. You seek to withhold the responsive information under section 552.103 of the Government Code.

Section 552.103(a) 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. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, (Tex. App.-- Austin 1997, no pet.); Open Records Decision No. 588 (1991). You advise that the information at issue here relates to a disciplinary proceeding instituted by the board as a result of the complaint filed by the requestor. Under board rules, the proceeding is conducted in accordance with the Texas Administrative Procedure Act.

Absent special circumstances, which you have not demonstrated here, once information has been obtained by all opposing parties to litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Here, the opposing party in the litigation, the individual whose response to her complaint the requestor seeks, has clearly had access to the requested information since it was she who submitted it to the board. Therefore, the information may not be withheld under section 552.103(a). It must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely



William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 134104

Encl. Submitted documents

cc: Ms. Barbara Lutz
914 Lake Point Circle
McKinney, Texas 75070
(w/o enclosures)