



October 10, 2000

Ms. Therese Sternenberg
T G Officer for Public Information
Texas Guaranteed Student Loan Corporation
P. O. Box 201725
Austin, Texas 78720-1725

OR2000-3882

Dear Ms. Sternenberg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139928.

The Texas Guaranteed Student Loan Corporation (the "TGSLC") received two requests for information from the same requestor. The first request dated July 24, 2000, is a request for four items of information. The second request dated July 25, 2000, incorporates the first request and includes an additional request for identity, including the business address of all ten [10] directors sitting on the [TGSLC] board." You state that you have released the requested board member's business addresses. You claim that the remainder of the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information, Exhibits C and D.¹

You assert that portions of Exhibit D contain information that is made confidential by section 552.101 in conjunction with section 57.11(d) of the Education Code. Section 552.101 excepts information from public disclosure that is made confidential *inter alia* by statute. Section 552.101 encompasses confidentiality statutes such as section 57.11(d) of the Education Code. Section 57.11(d) provides that "student loan borrower information collected, assembled, or maintained by the corporation is confidential and not subject to disclosure under Chapter 522, Government Code." You have marked information that the TGSLC considers confidential under section 552.101 in conjunction with section 57.11(d)

¹We 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). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

of the Education Code. After reviewing the representative samples of information contained in Exhibit D, we agree with your markings. We conclude that the TGSLC must withhold the highlighted information under section 552.101 in conjunction with section 57.11(d) of the Education Code.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) applies. To show that section 552.103 is applicable, the city must demonstrate 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 (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. 588 (1991).

Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the city must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989). You assert that the requestor states that a lawsuit is already being prepared against a third party for violation of his statutory rights, and that if TGSLC joins or endorses such violations, then the suit will be amended to include TGSLC. You assert that the requestor asks for the addresses of all ten directors of TGSLC's board in order to include each director in their individual capacity and sue in such capacity. Further, you state that the requestor asserts that "if any or all of the said directors carry policies of liability insurance insuring their actions as directors of TGSLC said directors are now on notice to identify impending claim to their carrier. After reviewing your assertions and the submitted documents, we conclude that TGSLC reasonably anticipates litigation, and that the submitted documents relate to the anticipated litigation.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

However, in this instance, we note that portions of Exhibits C and D fall within the purview of section 552.022 of the Government Code. Section 552.022 of the Government Code provides several categories of information that are not excepted from required public disclosure unless they "are expressly confidential under other law." The pertinent parts of this section read:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are

public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

(8) a statement of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures;

(14) administrative staff manuals and instructions to staff that affect a member of the public[.]

Gov't Code § 552.022(a)(1), (3), (8), & (14). Section 552.103 is a discretionary exception and is not "other law" for the purposes of section 552.022(a).²

First, portions of Exhibit D contain the written report related to the audit conducted by the TGSLC on January 11 through January 14, 1999. This portion of Exhibit D falls within the purview of section 552.022(a)(1) as a completed report. We have marked the portion of Exhibit D that must be released under section 552.022(a)(1).

Next, Exhibit C contains a contractual agreement between the TGSLC and a specific law firm. This contractual agreement falls under section 552.022(a)(3). Therefore, the TGSLC must release this contract to the requestor. We have marked the agreement to be released under section 552.022(a)(3).

²Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding), 549 at 6 (1990) (governmental body may waive informer's privilege), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions therefore do not constitute "other law" that makes information confidential.

Additionally, Exhibit C contains the by-laws of the TGSLC. After reviewing the documents, we conclude that the by-laws are made expressly public by section 552.022(a)(8). Therefore, the TGSLC must release the by-laws to the requestor.

Finally, Exhibit C contains portions of the TGSLC's Collections Manual. As noted above, administrative Manuals must be released under section 552.022(a)(14). Thus, the TGSLC must release the Collections Manual to the requestor.

In summary, the TGSLC must release Exhibit C in its entirety. The TGSLC must release the portions of Exhibit D we have marked under section 552.022(a)(1). The TGSLC must withhold the highlighted portions of Exhibit D pursuant to section 552.101 in conjunction with section 57.11(d) of the Education Code. Finally, the TGSLC may withhold the marked document in Exhibit D under section 552.103.

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).

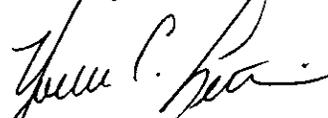
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,



Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/pr

Ref: ID# 139928

Encl. Submitted documents

cc: Mr. Barry McGee
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(w/o enclosure)