



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 27, 2003

Ms. Linda Bayless  
Director of Enforcement  
Texas Real Estate Commission  
P.O. Box 12188  
Austin, Texas 78711-2188

OR2003-6039

Dear Ms. Bayless:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186714.

The Texas Real Estate Commission (the "commission") received a request for information regarding a named individual, to include "her application for renewal of her real estate salesperson license, the [commission's] denial of such application, any investigation or complaint regarding [the named individual], and [the commission's] file no. 031737." You state that the commission will release some of the requested information to the requestor. You claim, however, that the remaining requested information is excepted from disclosure under sections 552.103, 552.107, 552.111, and 552.136 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides in pertinent part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the

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<sup>1</sup>We note that you did not raise section 552.136 as an exception to disclosure within ten business days of the date the commission received the present request. See Gov't Code §§ 552.301(b), .302. However, because section 552.136 is a mandatory exception that can provide a compelling reason to withhold information from disclosure, we will address your claim under section 552.136. See *id.*; see also Open Records Decision Nos. 150 at 2 (1977), 319 (1982).

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.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents sufficient to establish that section 552.103 applies to the information at issue. The governmental body must demonstrate: (1) that litigation was pending or reasonably anticipated on the date of its receipt of the request for information *and* (2) that the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App. – Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App. – Houston [1<sup>st</sup> Dist.] 1984, writ ref'd n.r.e.); *see also* Open Records Decision No. 551 at 4 (1990). To withhold information under this exception, both prongs of this test must be met. *Id.* A contested case under the Administrative Procedure Act (the "APA"), chapter 2001 of the Government Code, constitutes "litigation" for purposes of section 552.103. *See* Open Records Decision No. 588 at 7 (1991) (construing statutory predecessor to APA).

In this case, you state that the documents submitted as Exhibits A, B, C, and D pertain to a pending hearing on a denial of a license application. You explain that such a hearing relating to the disapproval of an application for a license issued by the commission is authorized pursuant to section 1101.364 of the Occupations Code and is governed by the APA. *See* 22 T.A.C. § 533.34. Based on your representations and our review of the submitted information, we find the commission has established that the information in Exhibits A, B, C, and D relates to a contested case that was pending at the time the commission received the present request. Accordingly, we determine that the commission may withhold the information in Exhibits A, B, C, and D from disclosure pursuant to section 552.103 of the Government Code.

We note, however, that 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, information that has either been obtained from or provided to all opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. 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).

Next, you state that the remaining information, submitted as Exhibit E, consists of records from a closed file in another case. You contend that the information in Exhibit E is excepted from disclosure under section 552.136 of the Government Code. Section 552.136 provides in pertinent part:

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; and

(2) any other assessment of the extent to which data processing operations, a computer program, network, system, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information is vulnerable to alteration, damage, or erasure.

Upon review, we determine that you have not demonstrated that the information in Exhibit E relates to computer network security or to the design, operation, or defense of a computer network as contemplated in section 552.136(a). Furthermore, you have not demonstrated that the information in Exhibit E consists of a computer network vulnerability assessment or report as contemplated in section 552.136(b). Consequently, Exhibit E is not excepted under section 552.136 and must be released to the requestor.

In summary, the commission must release Exhibit E to the requestor. The remainder of the submitted information may be withheld under section 552.103 of the Government Code. Based on this finding, we do not reach your other claimed exceptions to disclosure.

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 Dep't of Pub. 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 Hadassah Schloss at the Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 186714

Enc: Submitted documents

c: Mr. Gregory S. Cagle  
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(w/o enclosures)