



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 21, 1995

Mr. David Brown
Assistant General Counsel
General Services Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR95-1267

Dear Mr. Brown:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 33536.

The General Services Commission (the "commission") received a request for (1) fourteen categories of documents related to test results from an inspection of the Stephen F. Austin building, as well as the test results and other information gained from the inspection of the air quality in the building; (2) an answer to why vents were taped and covered in the requestor's client's area for an unspecified amount of time; (3) all information concerning the source of a leak of "greasy water" onto tiles above the requestor's client's office, over what period of time the leak existed, and whether it has been corrected; and (4) a request that a certified industrial hygienist be allowed to perform an inspection, review the test results, and confer with the doctor who performed the tests regarding the air quality in the building. You claim that a portion of the requested information is excepted from disclosure under section 552.103 of the Government Code.¹ We have considered the exception you claimed and have reviewed the documents at issue.²

¹The commission has not claimed an exception for categories 1 through 4 of the information sought in Attachment 2 to the requestor's letter. Therefore, we assume that the commission either has released or will release that information to the requestor.

²In the commission's letter, it states that a videotape and photographs are responsive to this request. However, those items were not submitted to this office for review. The Government Code requires that, in connection with a request for an opinion from this office, a governmental body submit to this office for review the specific information requested or representative samples of the requested information. Gov't Code § 552.303. Responsive documents or representative samples of responsive

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The commission has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *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 (1990) at 4. The commission must meet both prongs of this test for information to be excepted under section 552.103(a).

Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it--unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982). This office has concluded that litigation is reasonably anticipated when an attorney makes a written demand for disputed payments and promises further legal action if they are not forthcoming, and when a requestor hires an attorney who threatens to sue a governmental entity. Open Records Decision Nos. 555 (1990), 551 (1990). In this instance, the commission claims that litigation is reasonably anticipated because a Maury Hood wrote a letter to Representative Susan Combs in which he states that the requestor's client has been approached by lawyers willing to take her case and that a class action suit "looks probable." However, the commission has not shown that the requestor is represented by an attorney who has made a threat of suit. Therefore, the commission has not established that litigation is reasonably anticipated and may not withhold the requested information under section 552.103(a) of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."³ This section encompasses common-law and constitutional privacy. This office has found that the following types of information are excepted from required public disclosure under constitutional or

(Footnote continued)

documents are required because "[i]n order to determine whether information is subject to a particular exception, this office ordinarily must review the information." Open Records Decision No. 497 (1988) at 4. As you did not submit that information to this office within the time period provided by the Government Code, a presumption arises that this information is public. In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why this information should not be made public, you must release this information. Open Records Decision No. 195 (1978); see also Gov't Code § 552.352 (the distribution of confidential information is a criminal offense).

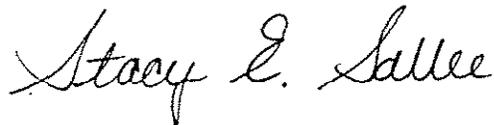
³The Office of the Attorney General will raise section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, Open Records Decision No. 470 (1987), and identities of victims of sexual abuse or the detailed description of sexual abuse, Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). After reviewing the documents, we conclude that certain information must be withheld under constitutional or common-law privacy. We have marked the information that must be withheld. The remaining information must be released.

You claim that responding to categories 10 and 12 of Attachment 2 would require the commission to perform general research. The Open Records Act does not require a governmental body to answer factual questions or perform legal research. Open Records Decision Nos. 561 (1990), 555 (1990), 379 (1983), 347 (1982). However, a governmental body does have a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990) at 8. If the commission holds information from which the requested information can be obtained, the commission must provide that information to the requestor.⁴

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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

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⁴The same is true for the request for "an answer" as to why vents were taped and covered in the requestor's client's area for an unspecified amount of time. As the requestor's final request is for the commission to allow an inspection and conference and the documents requested are otherwise addressed in this ruling, we do not address the requestor's final request.

Ref.: ID# 33536

Enclosures: Marked documents

cc: Mr. Thomas G. Tucker
Sutherland, Asbill & Brennan
Twenty-Third Floor
111 Congress Avenue
Austin, Texas 78701-4079
(w/o enclosures)