



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 26, 1996

Mr. Pat D. Westbrook  
Excessive Director  
Texas Commission for the Blind  
P.O. Box 12866  
Austin, Texas 78711

OR96-1023

Dear Mr. Westbrook:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40227.

The Texas Commission for the Blind (the "commission") received a request for information seeking

Vouchers, invoices and supporting documentation pertaining to A.I.R.'s installation of equipment at the V.A. and Tx.DOT. facilities - to include the 12/16/94 purchasing memo, Mr. Westphal's 1/17/96 memo and my 1/18/96 memo.

Copies of other paid invoices and documentation's with similar discrepancies.

Workpapers and January 1996 study report regarding work performed by A.I.R.

Spreadsheets prepared by Audit to show the sequence of A.I.R. events

Interview notes from both Peter Nolan and Tonya Netzley regarding alleged statements I made during our meeting of 2/20/96.

You claim that the requested information is excepted from required public disclosure by sections 552.103 and 552.107 of the Government Code. You have submitted to this office the requested information at issue for our review.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, 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; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

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 552.103(a).

In this instance, you state that requested materials involve a matter which the commission has referred to the District Attorney's Office for investigation of possible criminal conduct. You have submitted a letter from Ms. Claire Dawson-Brown, Public Integrity Unit Director of the Travis County District Attorney's Office, in which she states that her office is currently investigating current and former commission employees concerning actions taken at the commission. The letter also indicates that the District Attorney's Office requests that the commission's records in this matter be withheld from public disclosure. We conclude that litigation is reasonably anticipated and that the requested documents relate to that litigation. The commission may, therefore, withhold the requested materials pursuant to section 552.103.<sup>1</sup>

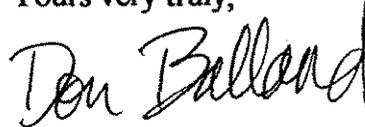
Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed.

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<sup>1</sup> Because we are able to make a determination here under section 552.103, we do not address your stated exception under section 552.107.

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.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref.: ID# 40227

Enclosures: Submitted documents

cc: Mr. Dennis O'Higgins  
2900 Gattis School Road  
Round Rock, Texas 78664  
(w/o enclosures)