



Office of the Attorney General

State of Texas

September 12, 1996

DAN MORALES
ATTORNEY GENERAL

Mr. John T. Richards
Assistant General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR96-1653

Dear Mr. Richards:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100714.

The Texas Department of Health (the "department") received a request for copies of all correspondence regarding the use of the Texas Licensed Professional Counselor Exam by other states, a copy of the evaluation of the requestor's licensure file, and a copy of the "deficiency notice" form that was used by the Texas State Board of Examiners of Licensed Professional Counselors (the "board") during 1992 and 1993. You submitted copies of the requested correspondence and "deficiency notice" form to this office for review and contend that this information is excepted from disclosure under section 552.103 of the Government Code. As you did not submit a copy of the requested evaluation to this office, we assume that you do not believe that this document is excepted from disclosure and that you have released this document to the requestor.

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) is applicable in a particular situation. In order to meet this burden, the governmental body must show 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.

You state that the board, with whom the department has an agency relationship, and the requestor are opposing parties "in pending litigation at the State Office of Administrative Hearings, Docket No. 501-95-1300.559." A contested case under the Administrative Procedure Act is litigation for purposes of section 552.103(a). Open Records Decision No. 588 (1991). Thus, you have demonstrated that litigation is pending for purposes of section 552.103(a). You have not,

however, explained how the information at issue relates to this litigation. As you have not met your burden of showing how section 552.103(a) is applicable to the information at issue, the information is not excepted from required public disclosure, and you must release it to the requestor.

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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 100714

Enclosures: Submitted documents

cc: Ms. Terry Gilmer
20612 Idyllwild
San Antonio, Texas 78258-2913
(w/o enclosures)