



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 22, 1997

Mr. Ron Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR97-0113

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103160.

The Texas Department of Public Safety (the "department") received a request for several categories of information concerning a former department employee. You claim that the requested records are excepted from required public disclosure by sections 552.101 and 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

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 department 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 department must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you claim that the requested information relates to pending litigation involving the Texas Lottery Commission (the "commission"). You state that the subject of this request is now employed by the commission and may be involved in the litigation. Mr. Matthew L Rienstra, the Assistant Attorney General who represents the commission, informs this office that the commission is involved in pending litigation, *Krane Ko Vending v. Lottery Commission*, No. 96-14591 (250th Dist. Ct., Travis County, Tex., Sept. 11, 1996). He seeks to withhold the information because of the pending litigation. He explains that the former department employee is a potential witness in the current suit. We conclude that litigation is pending and that the requested information relates to the litigation. The department may withhold the requested information. Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure).

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.

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). Because we are able to make a determination under section 552.103, we do not address your other arguments against disclosure. However, some of the requested information may be confidential and may not be released even after the litigation has concluded. *See, e.g.*, Gov't Code § 552.101; Gov't Code § 552.117; Open Records Decision Nos. 600 (1992) (personal financial information), 611 (1992) (common-law privacy). *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). If the department receives a subsequent request for the information at issue, you should re-assert your arguments against disclosure.

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# 103160

Enclosures: Submitted documents

cc: Mr. Stephen Fenoglio
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(w/o enclosures)