



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 16, 1998

Mr. Rodger Barnes
Assistant Commissioner
Texas Appraiser Licensing and Certification Board
P.O. Box 12188
Austin, Texas 78711-2188

OR98-1677

Dear Mr. Barnes:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116536.

The Texas Appraiser Licensing and Certification Board (the "board") received three requests for information. One request seeks complaint information concerning an individual who is a complainant in a contested case scheduled for hearing before the State Office of Administrative Hearings ("SOAH"). Another request seeks the names of individuals "who are the focus of a formal or informal disciplinary hearing," and also the date of each scheduled hearing, and the types of charges and ranges of punishment each person is subject to. A separate request asks for the names and addresses of individuals who have received certain notices from the board and "whose matter is still pending before the agency or the State Office of Administrative Hearings." You submitted to this office as responsive to the request copies of pleadings filed with SOAH, information concerning scheduled hearings, and information concerning cases in which complaints are being prepared by the board but have not yet been filed. You indicate that the board seeks to withhold from disclosure, under section 552.103(a), responsive information concerning both the pending SOAH cases and the complaint cases that are being prepared.

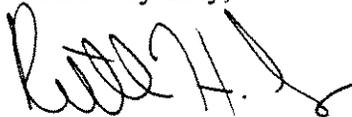
We note initially that the requestors seek more types of information than what was provided to this office. To the extent that the records submitted to this office are samples of the documents at issue, we assume that these documents are truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). Please note that we do not address any other requested records to the extent that those records contain substantially different types of information than the samples submitted to this

office. We also note that if the board does not have some of the information requested, it is not generally required to compile or create new information in response to a public records request. Open Records Decision Nos. 452 (1986) at 3 (open records request applies to information in existence when request is received), 362 (1983) at 2 (governmental body does not have to supply information which does not exist).

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the 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. However, information filed with a court is generally a matter of public record and may not be withheld from disclosure. *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Also, once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, we conclude that you may not withhold from disclosure under section 552.103(a) the pleadings filed by the board with SOAH and documents in any of the cases that have been seen by the opposing party. However, the board may withhold from disclosure the pleadings that are being prepared and have not yet been filed or seen by the opposing party. The board also may withhold other responsive records in the pending cases that have not been filed with the court or seen by the opposing parties. Please note that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

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Enclosures: Submitted documents

cc: Mr. Kevin Blandford
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(w/o enclosures)

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