



May 24, 1999

Mr. Sealy Hutchings
General Counsel
Consumer Credit Commission
2601 North Lamar Boulevard
Austin, Texas 78705

OR99-1445

Dear Mr. Hutchings:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 123601.

The Office of the Consumer Credit Commissioner (the “commissioner”) received a written request for “your file on Bill Heard Chevrolet and Landmark Chevrolet.” You indicate that among the responsive records held by the commissioner, you seek to withhold only one three-page document, which you seek to withhold pursuant to, *inter alia*, section 552.103 of the Government Code. You explain that the information at issue is a memorandum addressed to you from an attorney with the Texas Department of Transportation (the “department”) and “regards possible expert testimony by [a commission] employee at a Department of Transportation administrative hearing that was upcoming at the time the memorandum was written.” An attorney from the department has confirmed in correspondence with this office that the information at issue was submitted to the commissioner in connection with administrative litigation that is currently pending. You have therefore demonstrated that the information at issue “relates” to pending litigation. However, the commissioner is not a party to that litigation.

To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation *to which the governmental body is a party*. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); Open Records Decision No. 588 at 1 (1991). Generally, a governmental body may not seek to withhold information pursuant to the “litigation exception” unless it is a party to the litigation. *See, e.g.*, Open Records Decision Nos. 392 (1983), 132 (1976).

In this instance, however, we note that the commissioner received the records at issue from the department during a time that the department could have properly raised section 552.103 on its own behalf had it received an open records request for the information. It is the well-settled policy of this state that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. Attorney General Opinion H-683 (1975). The Public Information Act does not undercut that policy. *Id.* See also Attorney General Opinion M-713 (1970) (inter-governmental transfer of information authorized where transfer was for “related administrative aim”).

You explain that

[t]he mission of the Office of Consumer Credit Commissioner is to regulate the credit industry and educate consumers and creditors, thereby producing a fair, lawful and healthy credit environment for social and economic prosperity in Texas. The focus of our regulation and education includes the rubric of car dealerships. In that context, any employee of [the commissioner] who served as a witness for the Department of Transportation would be acting in tandem with that agency and that agency would be assisting us in our mission.

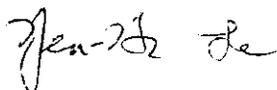
We believe that you have demonstrated that the records at issue were transferred to the commissioner in connection with a “related administrative aim;” therefore, the commissioner may withhold these records on behalf of the department pursuant to section 552.103 of the Government Code.¹ *But see* Tex. R. Civ. P. 192.3(e)(6) (materials “provided to, reviewed by, or prepared by or for the expert in anticipation of a testifying expert’s testimony” not privileged from discovery).

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103. We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

¹Because we resolve your request under section 552.103, we need not address the other exceptions you raised.

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.

Sincerely,

A handwritten signature in cursive script, appearing to read "Yen-Ha Le".

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RWP/eaf

Ref.: ID# 123601

Eecl.: Submitted documents

cc: Mr. Rodrigo De Llano, Jr.
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(w/o enclosures)