



June 10, 1999

Ms. Loretta R. DeHay
Director of Enforcement
Texas Real Estate Commission
P.O. Box 12188
Austin, Texas 78711-2188

OR99-1628

Dear Ms. DeHay:

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# 125253.

The Texas Real Estate Commission (the "commission") received a request for a particular complaint file concerning the requestor. You have released some of the requested information. However, you claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

To show that section 552.103(a) is applicable, the commission must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *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 at 4 (1990). Contested cases conducted under the Administrative Procedure Act, chapter 2001 of the Government Code, are considered litigation under section 552.103. Open Records Decision No. 588 at 7 (1991). Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the commission must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

The commission is authorized to license and regulate real estate brokers, salespersons and inspectors under article 6573a of the Texas Civil Statutes. The commission is also

authorized to investigate possible violations of the Texas Real Estate License Act and pursue disciplinary action against licensees when evidence of a violation is found. Additionally, the commission's investigative and disciplinary proceedings are contested cases subject to the Administrative Procedure Act. V.T.C.S. art. 6573a, § 17(a). In this instance, the commission has supplied this office with information which shows that there is a pending investigation, and the commission will take enforcement action as authorized by statute. We conclude that litigation is reasonably anticipated. We additionally find that the documents submitted by the commission are related to the reasonably anticipated litigation for the purposes of section 552.103(a). You may, therefore, withhold the submitted documents pursuant to section 552.103.

Generally, 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. We also note that 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).

As we have resolved the matter under section 552.103, we need not address your other claimed exceptions. 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 125253

Encl.: Submitted documents

cc: Mr. Philip C. Banks
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(w/o enclosures)