



July 30, 1999

Ms. Maureen E. Ray
Assistant General Counsel
State Bar Of Texas
P.O. Box 12487
Capitol Station
Austin, Texas 78711-2487

OR99-2143

Dear Ms. Ray:

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# 126122.

The Commission for Lawyer Discipline (the "Commission") received a request for the following information "in e-mail and/or diskette media":

1. All of the information, proceedings, hearing transcripts, documents, statements, and other information coming to the attention of the investigatory panels of the State Bar in (sic) Texas since the advent of the Americans With Disabilities Act in June, 1990, wherein there were findings of Just Cause and Sanctions other than private reprimands (which may have included restitution and payment of Attorneys Fees) imposed by agreement of the Respondents.
2. All notices to each jurisdiction in which an attorney is admitted to practice law of Sanctions imposed in Texas, other than private reprimands (which may have included restitution and payment of Attorney Fees), and all disability suspensions, resignations, and reinstatements since the advent of the Americans With Disabilities Act in June, (Any further text did not survive [the requestor's] fax transmission).

3. All records and files of all disciplinary and disability matters and compiled reports and statistics to aid in the administration of the system - wherein such information in its custody and control is neither confidential nor privileged - since the advent of the Americans With Disabilities Act in June, 1990.

4. Copies of all Abstracts of Appeals to the [Board of Disciplinary Appeals] or to a court abstracted by the Chief Disciplinary Counsel - since the advent of the Americans With Disabilities Act in June, 1990.

5. Copies of all reports to the Clerk of the Supreme Court of the final disposition of Disciplinary Proceedings and Disciplinary Actions resulting in the imposition of Sanctions other than private reprimands (which may have included restitution and payment of Attorneys Fees - since the advent of the Americans With Disabilities Act in June, 1990.

You state that you are corresponding with the requestor, in accordance with section 552.231 of the Government Code, concerning the programming or manipulation of data that responding to items 1, 2, and 5 will require. You contend that item 3 is unclear, and you state that you have asked the requestor to clarify this item of the request. You contend that the information responsive to item 1 is excepted from disclosure under sections 552.101 and 552.107(2) of the Government Code, the attorney-client privilege, the attorney work product privilege, and other privileges established by the Texas Rules of Disciplinary Procedure. You also contend that all of the requested information is excepted from disclosure under sections 552.103(a) and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed a representative sample of the information at issue.¹

Initially, we address your contention that item 3 of the request is unclear. We note that item 3 tracks the language of Rule 6.02 of the Texas Rules of Disciplinary Procedure which provides as follows:

The Commission [for Lawyer Discipline] shall respond, as appropriate, to all public and media inquiries concerning the operation of the attorney professional disciplinary and disability system, but in doing

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

so may not disclose information that is confidential or privileged. *The Commission shall disclose, upon proper request, information in its custody or control that is neither confidential nor privileged.* Any attorney may waive confidentiality and privilege as to his or her disciplinary record by filing an appropriate waiver on a form to be prescribed by the Commission. The Commission shall maintain *complete records and files of all disciplinary and disability matters and compile reports and statistics to aid in the administration of the system.*

Tex. R. Disciplinary P. 6.02, *reprinted in Gov't Code Ann., tit. 2, subtit. G app. A-1* (emphasis added). Furthermore, when a governmental body is presented with a broad request for information rather than for specific records, it should advise the requestor of the types of information available so that he may narrow his request. Open Records Decision Nos. 563 (1990), 561 (1990). If you have not already done so, you should advise the requestor of the types of information that the Commission maintains pursuant to Rule 6.02.

The exceptions to disclosure in the Public Information Act generally do not apply to information made public by other statutes. Open Records Decision No. 525 (1989). The information requested in item 1 is deemed public under Rule 2.15 of the Texas Rules of Disciplinary Procedure. The information requested in item 4 is deemed public under Rule 6.04 of the Texas Rules of Disciplinary Procedure. Therefore, in this case, none of the exceptions that you have claimed apply to the information responsive to items 1 or 4 of the request. The Commission must publicly disclose information responsive to item 1 of the request. You inform us that the information responsive to item 4 "is not within the custody or control of the Commission." Assuming that the Commission does not possess or have a right of access to the information responsive to item 4, the Commission should refer the requestor to the entity that maintains the information.

You contend that the information responsive to items 2, 3, and 5 of the request is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. To the extent that this information has been sent to Texas Bar Journal or a newspaper for publication pursuant to Rule 6.07 of the Texas Rules of Disciplinary Procedure, the information cannot be withheld from disclosure under section 552.103 or section 552.111. *See* Open Records Decision Nos. 454 (1986), 192 (1978). *Cf.* Gov't Code § 552.007. We will address these exceptions for the remaining information responsive to items 2, 3, and 5 of the request.

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

The requestor is the plaintiff in litigation currently pending against the State Bar of Texas and the Commission. *Swisher v. State Bar of Texas*, No. 199-15727 (Dist. Ct., Harris County, Tex.). We agree that the remaining information relates to this litigation. Therefore, the Commission may withhold this information from disclosure under section 552.103(a) of the Government Code.

In reaching this conclusion, however, we assume that the opposing party in 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). 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).²

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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 126122

Encl. Submitted documents

²Because we are able to resolve this matter under section 552.103(a), we do not address your section 552.111 claim.

Ms. Maureen E. Ray - Page 5

cc: Mr. Jack Swisher
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Houston, Texas 77079
(w/o enclosures)