



August 25, 1999

Ms. Missy Cary
Assistant Attorney General
Public Information Coordinator
P.O. Box 12548
Austin, Texas 78711-2548

OR99-2409

Dear Ms. Cary:

Your predecessor asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127089.

The Office of the Attorney General (the "attorney general") received several written requests from the same individual for various categories of information that you contend are excepted from required public disclosure pursuant to section 552.103 of the Government Code. 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). This exception does not apply, however, once all parties to the litigation have gained access to the information at issue. Open Records Decision Nos. 349 (1982), 320 (1982).

The requestor first seeks documents "concerning the actual and projected cost of the State of Texas in the Attorney General's Office staff and attorney time, and court costs, in defending lawsuits by Jack Swisher against the Texas Workers' Compensation Commission" You explain that

Mr. Swisher presently has pending before the (Houston) Fourteenth Court of Appeals an appeal from an adverse summary judgment wherein the 129th District Court, Harris County, Texas rejected, as a matter of law, his claims to entitlement to the following accommodations requested pursuant to the ADA and to the 1973 Federal Rehabilitation Act: (a) electronic exchange of all forms,

orders, correspondence, etc. between TWCC and Jack Swisher; and
(b) live video teleconference participation in all TWCC proceedings,
conferences, meetings, etc.

The attorney general is representing the Texas Workers' Compensation Commission in this pending action. We conclude that you have met your burden of establishing that the information sought in this first request, including sub-items a - d, relates to pending litigation to which the state is a party. These records may be withheld pursuant to section 552.103 of the Government Code.

The requestor also seeks all attorney general records containing "information in accounts, vouchers, or contracts," "information used to estimate the need for or expenditure of public funds or taxes," and "all administrative staff manuals and instructions to staff by the Texas Attorney General's office since 1992" concerning the following categories of information:

- a. electronic exchanges of forms and data among the Texas Attorney General's Office, its employees in their official capacities, and other persons and entities.
- b. live video teleconferencing among the Texas Attorney General's Office, its employees in their official capacities, and other persons and entities.
- c. accommodations for the physical disabilities of employees of the Texas Attorney General's Office.
- d. accommodations for the physical disabilities of persons other than employees of the Texas Attorney General's Office.

You inform this office that the requestor has filed suit against the attorney general pursuant to the Americans with Disabilities Act of 1990 (the "ADA"), 42 U.S.C. § 12101 *et seq.* We have reviewed the complaint filed in federal court against the attorney general and conclude that the requested records listed above relate to that litigation for purposes of section 552.103. Consequently, the attorney general may also withhold the remaining requested documents at this time pursuant to section 552.103.

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 black ink that reads "Karen Hattaway". The signature is written in a cursive, flowing style.

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/nc

Ref.: ID# 127089

Encl. Submitted documents

cc: Mr. Jack Swisher
778 Bateswood #2
Houston, Texas 77079
(w/o enclosures)