



October 14, 1999

Ms. Katherine Minter Cary
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR99-2924

Dear Ms. Cary:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128457.

The Office of the Attorney General (the "OAG") received a request for information related to a complaint made to the Texas Appraiser Licensing and Certification Board (the "Board"), and assigned Complaint Number 96-012; you refer to this request as Public Information Request #5328. You represent the Board. The request was made by an attorney representing the individuals who are subject to the complaint. You relate that certain responsive information has been released to the requestor. However, you seek to withhold a portion of the requested information, claiming that it is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. You have submitted the information you seek to withhold to this office for review. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. To secure the protection of section 552.103(a), a governmental body has the burden of providing relevant facts and documents to show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). 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).

You relate that the Board was unable to resolve the dispute that is the subject of the requested information with the subject parties and therefore a State Office of Administrative

Hearings (SOAH) contested case will be filed against these parties. We note that the Board is subject to the Administrative Procedure Act. *See* Tex. Rev. Civ. Stat. Ann. Art 6573a.2 §(8) (Board subject to Article 6252-13a, Vernon's Texas Civil Statutes (now codified in pertinent part as Gov't Code Chpt. 2001)). We conclude that you have demonstrated that the requested information relates to litigation that is reasonably anticipated. The information may therefore be withheld under section 552.103(a) of the Government Code.

However, absent special circumstances, where an opposing party to the anticipated litigation has had access to the records at issue, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Where an opposing party in the anticipated litigation has seen or had access to any of the information in these records, there is no justification for now withholding that information from the requestor pursuant to section 552.103(a); that information must be released. 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 this request is resolved under section 552.103, we do not address your arguments raised under other provisions of the Government Code. 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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 128457

Encl. Submitted documents

cc: Mr. Tim Power
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(w/o enclosures)