



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 31, 1993

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Legal Affairs Division  
Texas Department of Criminal Justice  
P. O. Box 99  
Huntsville, Texas 77342-0099

OR93-526

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.)<sup>1</sup> Your request was assigned ID# 21044.

The Texas Department of Criminal Justice (the "department") received an open records request for certain information related to a claim for overtime compensation. You contend that the requested information may be withheld from public disclosure pursuant to section 552.103(a) of the Government Code (former section 3(a)(3), article 6252-17a, V.T.C.S.). To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation.

Absent special circumstances, however, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to the

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<sup>1</sup>We note that the Seventy-Third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

information in the requested records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). One of the documents you have submitted for our review is a notice that the department apparently provided to all employees in the claimant's position. The remainder of the documents consist of either correspondence between the department and the claimant or surveys completed by the claimant. Based on our review, we conclude that the claimant, who is the opposing party to the anticipated litigation you have described in support of your section 552.103(a) argument, has had access to all of the requested information. Consequently, the requested information must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Rebecca L. Payne  
Section Chief  
Open Government Section

RLP/rho

Ref.: ID# 21044

Enclosures: Submitted documents

cc: Makia Epie  
P. O. Box 310  
Cedar Hill, Texas 75104  
(w/o enclosures)