



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 2, 1994

Mr. Bob Schmidt
Assistant Attorney General
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR94-429

Dear Mr. Schmidt:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552. We assigned your request ID# 24684.

The Office of the Attorney General (the "attorney general") has received two requests for information relating to the United States Department of Justice's objection to the Edwards Aquifer Authority Act under section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C § 1973c. In the more inclusive of the two requests, the requestor seeks the following information:

- 1) Minutes, notes and all pertinent material developed by staff or attorney acting on behalf of Attorney General, the State Legislature, the Secretary of State or any other agency or representative of State government for the meeting with the Department of Justice held in December, 1993, regarding the Department of Justice objection to SB 1477.
- 2) All records, notes, minutes, printed materials, tape recordings (if any) of the actual meeting with the Department of Justice.
- 3) All material developed in response to the meeting with the Justice Department.

You advise us that the attorney general has made some of the requested information available to the requestor. You seek to withhold the remaining information, however, which you have submitted to us for review, under sections 552.103 and 552.107 of the Government Code.

Section 552.103(a) excepts information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). Whether a governmental body may anticipate litigation must be determined on a case-by-case basis. Open Records Decision No. 452 (1986).

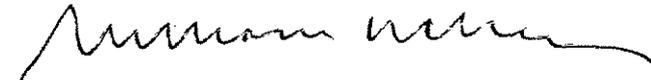
You advise us that the Secretary of State of the State of Texas has submitted the proposed Edwards Aquifer Authority Act to the United States Department of Justice for preclearance pursuant to section 5 of the Voting Rights Act, as amended, 42 U.S.C. § 1973c. Generally, section 5 of the Voting Rights Act permits a state to seek a declaratory judgment in the United States District Court for the District of Columbia to enforce certain proposed or enacted laws or procedures with respect to voting. The state, however, may also choose to seek enforcement of the proposed law or procedure without resort to the court by seeking preclearance from the United States Department of Justice. 42 U.S.C. § 1973c. If the Department of Justice objects to the proposed law or procedure, the state may still seek enforcement by declaratory judgment in district court. *See Allen v. State Bd. of Elections*, 393 U.S. 544 (1969).

You advise us that, although the secretary of state has sought preclearance under section 5 of the Voting Rights Act, preclearance has been denied. You further advise us that the attorney general has sought clarification of the scope of the objection which the United States Department of Justice has lodged against the proposed Edwards Aquifer Authority Act. Finally, you advise us that the state will seek a declaratory judgment pursuant to section 5 of the Voting Rights Act in the event that the United States Department of Justice continues its objection to the proposed enactment. On the basis of these facts, we conclude that the state may reasonably anticipate litigation under section 5 of the Voting Rights Act. Moreover, we conclude that the submitted information relates to the anticipated litigation. Accordingly, the attorney general may withhold the

submitted information under section 552.103(a) of the Government Code.¹ As we resolve this matter under section 552.103(a), we need not address the applicability of section 552.107 at this time.

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 this office.

Yours very truly,



William Walker
Assistant Attorney General
Open Government Section

WMW/GCK/rho

Ref.: ID# 24684
ID# 25256

Enclosures: Submitted documents

cc: Mr. Hans Holland
Inland Ocean, Inc.
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San Antonio, Texas 78209-0949
(w/o enclosures)

¹In addition, we assume that the United States Department of Justice has not previously had access to the records at issue; absent special circumstances, once all parties to the litigation have obtained the information, 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 any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). 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).