



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 31, 1994

Mr. Richard D. Monroe  
Deputy General Counsel  
Texas Department of Transportation  
125 East 11th Street  
Austin, Texas 78701-2483

OR94-527

Dear Mr. Monroe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 26476.

The Texas Department of Transportation (the "department") has received a request for information relating to an internal departmental audit of the department's office in Liberty, Texas, in 1993. Specifically, the requestor seeks "any [and] all information [the Internal Review Board] had or may have acquired during their inquiry." You have submitted representative samples of the requested information to us for review. You claim that sections 552.103(a) and 552.107(1) of the Government Code except the requested information from required public disclosure.

Section 552.103(a) of the Government Code excepts from required public disclosure 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.

For information to be excepted from public disclosure by section 552.103(a), litigation must be pending or reasonably anticipated and the information must relate 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.); *see also* Open Records Decision No. 551 (1990) at 5. Although section 552.103(a) gives the attorney for a governmental body discretion to determine whether section 552.103(a) should be claimed, that determination is subject to review by the attorney general. Open Records Decision Nos. 551 at 5; 511 (1988) at 3.

You advise us that the requested information relates to a lawsuit to which the department is currently a party, styled *Sheila Randolph v. James A. Mosley and Texas Department of Transportation*, filed in the 250th District Court of Travis County, Cause No. 93-10710. We conclude, therefore, that litigation is pending for purposes of section 552.103(a). We fail, however, to understand how the submitted information relates to the pending litigation. The requestor seeks information relating to a department audit; the pending litigation, however, arises out of a sexual harassment complaint. Your explanation as to how the audit relates to the sexual harassment suit is only conclusory. Moreover, the representative samples you enclosed do not appear to relate to the sexual harassment litigation, except for one small portion which refers to a "sexual harassment situation." We conclude, therefore, that the department has not sustained its burden in establishing the applicability of section 552.103(a) of the Government Code to the representative samples, with the exception of one portion we have marked.<sup>1</sup>

You also seek to withhold some of the requested information under section 552.107(1) of the Government Code. Section 552.107(1) excepts information from disclosure if:

(1) it is information that . . . an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

Section 552.107(1) protects information that reveals client confidences to an attorney, including facts and requests for legal advice, or that reveals the attorney's legal advice. *See* Open Records Decision No. 574 (1990).

We have examined the legal memorandum for which you seek section 552.107(1) protection. We conclude that it reveals client confidences to an attorney or attorney's legal advice. Accordingly, the department may withhold the memorandum under section 552.107(1) of the Government Code.

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<sup>1</sup> This open records letter does not reach, and therefore does not authorize the withholding of the other information in the requested audit file.

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,



Kay H. Guajardo  
Assistant Attorney General  
Open Government Section

KHG/GCK/rho

Enclosures: Marked documents

Ref.: ID# 26587

cc: Mr. Raymond Dickerson  
Route 1, Box 170  
Hull, Texas 77564  
(w/o enclosures).