



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 28, 1995

Ms. Martha McCabe
General Counsel
General Land Office
1700 North Congress Avenue
Austin, Texas 78701-1495

OR95-1010

Dear Ms. McCabe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35175.

The General Land Office (the "office") received a request for the GLO-1, GLO-2, and GLO-3 databases, including the file layout and format. You claim that a portion of the requested information is excepted from disclosure under section 552.103(a) of the Government Code.¹ You have submitted to this office for review samples of the documents requested.² We have considered the exception you claimed and have reviewed the sample documents.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The office has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information

¹We understand that you are not claiming that the GLO-2 database is excepted from disclosure. You also inform us that the office does not object to releasing the portion of the GLO-3 database that relates solely to gas royalties. Therefore, we assume that the office either has released or will release this information to the requestor.

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The office must meet both prongs of this test for information to be excepted under 552.103(a).

You state that a lawsuit between the office and eight oil companies is currently pending. In that lawsuit, the office claims that the defendant oil companies have been basing their oil royalties on "posted prices," which the office claims are below fair market prices. The office is suing for alleged underpayment of oil royalties. The office has met the first prong of the section 552.103(a) test. The sample documents relate to oil production and the payment of royalties based on the production of oil. We conclude that the office may withhold the GLO-1 database and that portion of the GLO-3 database that relates to oil royalties from disclosure under section 552.103(a). We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, 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).

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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 35175

Enclosures: Submitted documents

cc: Mr. Daniel L. Wilson, P.E.
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(w/o enclosures)