



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 14, 1996

Mr. Richard D. Monroe
Deputy General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 East 11th Street
Austin, Texas 78701-2483

OR96-0336

Dear Mr. Monroe:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 27623.

The Texas Department of Transportation (the "department") received a request for information concerning a portion of FM Highway 1409 in Liberty County, including copies of any documents relating to complaints received by the department regarding that portion of FM 1409. You assert that the requested information is excepted from disclosure because it relates to pending litigation pursuant to section 552.103(a) of the Government Code.

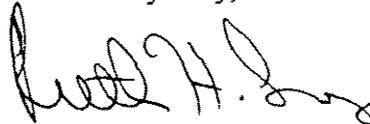
To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information "relates" to pending or anticipated litigation is pending. You have submitted to this office a copy of the petition to show that litigation is pending. We have also reviewed the records, and our review shows that they are related to pending litigation. In this instance, you have made the requisite showing that litigation is pending for the purposes of section 552.103(a). The requested records may therefore be withheld.¹

¹We note that you did not initially inform this office that litigation was pending. We remind you that in Open Records Decision No. 638 (1996) at 3, the act requires a governmental body raising section

In reaching this conclusion, we assume that the opposing party to the litigation has not previously has access to the records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, for example, through discovery or otherwise, no section 552.103(a) interests exists with respect to that information. Open Records Decision No. 349 (1982) at 2. If the opposing party in the pending litigation has 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). The applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We also note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the department's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

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 fact 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.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/SAB/ch

Ref.: ID# 27623

Enclosures: Open Records Decision No. 638 (1996))
Submitted documents

cc: Mr. Richard L. Griffin
Griffin & Laser, L.L.P.
P.O. Box 27468
Houston, Texas 77227-7468
(w/ enclosures--Open Records Decision No. 638 (1996))

552.103(a) to provide this office with information about new and significant developments concerning the anticipated litigation.