



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 27, 1996

Mr. Spencer Reid
Acting General Counsel
Texas Land Office
Stephen F. Austin Building
1700 North Congress Avenue
Austin, Texas 78701-1495

OR96-0425

Dear Mr. Reid:

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# 37998.

The Texas Land Office (the "agency") received a request for the "databases" captioned as GLO-1, GLO-2 and GLO-3. A further request was made to reduce the "databases" to a tape within the specific parameters of a 6250 BP1, EBC DIC packed decimal format. A similar request involving the GLO-1, GLO-2 AND GLO-3 database was the subject of request for information in Open Records Letter No. 95-1010 (1995). We concluded that the agency could withhold the GLO-1 database and the portion of the GLO-3 database that relates to oil royalties from disclosure under 552.103(a).¹

You claim that the requested information is excepted from disclosure under section 552.103(a) of the Government Code. The requester's client is a party to ongoing litigation involving the agency. We understand that the office will provide to the requester the GLO-2 database and the gas royalty portions of the GLO-3 database. You also do not object to releasing the actual GLO-1 and GLO-3 forms previously submitted to the agency by the requestor. However, you do object to releasing the database in which the information has been stored. You have submitted to this office for review samples of the documents requested.² We have considered the exception you claim and have reviewed the sample documents.

¹ The agency did not claim an exception for GLO-2 in the opinion request answered in OR95-1010 (1995).

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 agency 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 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 agency must meet both prongs of this test for information to be excepted under 552.103(a).

You state that two lawsuits, which involve the records at issue, are currently pending between the agency and several oil companies. The requester's client is a party in one of the lawsuits. The agency has met the first prong of the section 552.103(a) test. We have examined the sample documents which comprise a portion of the database related to oil production, GLO-1, and the payment of royalties based on the production of oil, GLO-3. We conclude that the office may withhold from disclosure under section 552.103(a) the GLO-1 database and that portion of the GLO-3 database that relates to oil royalties. 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 requester 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).

The remaining issue is whether copies of the actual forms previously submitted by the requestor must be provided to the requester or a copy of the database in which the information has been compiled and stored. It is our understanding that other information which is excepted from disclosure was also compiled and stored on the same database. The requester wishes to have the computer compilation provided rather than the actual forms from which the compilation is based.

Under section 552.228(b), a governmental body is required to provide a copy of the information in the requested medium unless it cannot meet any of the reasons as set forth in section 552.228(b). Section 552.228(b) provides:

If public information exists in an electronic or magnetic medium, the requestor may request a copy either on paper or in an electronic medium, such as on diskette or on magnetic tape. A governmental body shall provide a copy in the requested medium if:

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.

- (1) the governmental body has the technological ability to produce a copy of the requested information in the requested medium;
- (2) the governmental body is not required to purchase any software or hardware to accommodate the request; and
- (3) provision of a copy of the information in the requested medium will not violate the terms of any copyright agreement between the governmental body and a third party.

In the immediate instance, you maintain that you are only required to provide that information which the requester's clients have "seen or had access to" and not the database in which the information has been stored. Based on the information you have provided to us, we believe that the requestor's clients have "seen or had access to" the information on the GLO-1 and GLO-3 forms, albeit in a different medium. Nonetheless, section 552.228(b)(1) provides that the governmental entity must provide the information if it has the technological ability to do so. Under section 552.228(c), a paper copy of the requested information may be provided as an alternative if the governmental body has an inability to produce a copy of the requested information. You do not maintain that the commission has an inability to produce the information in the requested medium or that the provision of the copy of the information violates the terms of any copyright agreement between the commission and a third party.

We therefore conclude that the copies of the GLO-1 and GLO-3 forms submitted by the requester's client be provided in the requested medium.

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

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/ch

Ref.: ID# 37998

³ Act of May 29, 1995, 74th Leg., R.S., Ch.1035, §18, 1995 Tex.Sess.Law Serv. 5127, 5139.

Enclosures: Submitted documents

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(w/o enclosures)