



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 9, 1996

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

OR96-0520

Dear Mr. Monroe:

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# 28435.

The Texas Department of Transportation (the "department") received a request for information relating to a condemnation case. You state that the case was set for trial on November 14, 1994, and claim that the information is therefore excepted from required public disclosure under section 552.103 of the Government Code.

To be excepted under section 552.103, the department must demonstrate 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. You have met your burden under section 552.103 for most of the requested information. However, the "Hydraulic Study" as to SH 121" was the subject of a prior request for records, Open Records Letter No. 94-348 (1994). This information is public and may not be withheld. Open Records Letter No. 94-681 (1994) (ID# 28066) (denial of department's request for reconsideration of Open Records Letter No. 94-348 (1994)). Except for the information discussed above, you may withhold the requested information under section 552.103(a) of the Government Code.

In reaching this conclusion, however, we assume that the opposing party to the litigation has not had access to the records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that section 552.103(a) no longer applies once the litigation has 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 28435

Enclosures: Open Records Letter Nos. 94-348, 94-681
Submitted documents

cc: Mr. Douglas H. Conner, Jr.
Law Offices of Eddie Vassallo, P.C.
Regency Plaza, Suite 1200
Dallas, Texas 75219-4207
(w/o enclosures)