



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 1, 1996

Mr. Frank Stenger-Castro
General Counsel
Texas Workers' Compensation Insurance Facility
8303 MoPac Expressway North, Suite 310
Austin, Texas 78759-8396

OR96-1811

Dear Mr. Stenger-Castro:

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# 100921.

The Texas Workers' Compensation Insurance Facility ("the facility") received several requests for information regarding a variety of related matters. You assert that the facility may withhold all of the requested items of information from required public disclosure based on section 552.103 of the Government Code. Additionally, you contend that the information requested is excepted from required public disclosure pursuant to article 5.76-2, section 2.11, of the Insurance Code and sections 552.101, 552.110 and 552.111 of the Government Code. You have submitted representative samples of the documents the facility believes are exempt from required public disclosure.¹ We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.103(a), the "litigation exception," 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

¹We 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). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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.

The facility has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. In order to show the applicability of section 552.103, a governmental entity must show that (1) litigation is pending or reasonably anticipated, and that (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 facility must meet both prongs of this test for the information to be excepted under section 552.103(a).

You state that "litigation involving the Facility and the Industrial Labor Service family of insureds is currently pending." You have provided our office with a list of the pending cause numbers, which are set before the Travis County district courts. Accordingly, you have satisfied the first prong of section 552.103(a) by demonstrating that the facility is a party to pending litigation. However, you must also show how the requested information relates to the pending litigation.

In order to secure the protection of the "litigation exception," the second prong of section 552.103(a) requires that a governmental body demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision Nos. 588 (1991), 551 (1990). We have examined the information and documents submitted to us for review and believe that it relates to the pending lawsuits. However, you state that the facility complied with earlier requests for information from the requestor because at the time the facility was "unaware that these files were related to matters currently in litigation." If the opposing parties in the litigation have seen or had access to any of the information in these records, there is no justification for now withholding that information from the requestor pursuant to section 552.103(a).² Therefore, we conclude that the facility may withhold from disclosure under section 552.103 all of the requested documents that the facility has not previously released to the public. We note that the applicability of section 552.103(a) generally ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

²Once information has been obtained by all parties to the litigation, for example, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision.³ 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,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad

Assistant Attorney General
Open Government Section

SH/cbh

Ref.: ID# 100921

Enclosures: Submitted documents

cc: Mr. Larry E. Kosta
11615 Angus Road, Suite 219B
Austin, Texas 78759
(w/o enclosures)

³As we resolve your request under section 552.103(a), we need not address your claimed exceptions under sections 552.101, 552.110 and 552.111 at this time. We note that the facility has discretion to release information that is not otherwise confidential by law. Gov't Code § 552.007.