



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 22, 1996

Ms. Jennifer Soldano  
Assistant General Counsel  
Texas Department of Transportation  
Dewitt C. Greer State Highway Bldg.  
125 East 11th Street  
Austin, Texas 78701-2483

OR96-1909

Dear Ms. Soldano:

Your predecessor asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 27159.

The Texas Department of Transportation (the "department") received a request for information relating to contracts 162XXM8002, 162XXM8003, and 161XXM1010. You seek to withhold the information pursuant to section 552.103(a) of the Government Code. You have submitted a representative sample of the requested information for our review.<sup>1</sup>

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. You do not assert that litigation is reasonably anticipated. Rather, you assert that the requestor is "currently engaged in administrative litigation with the [d]epartment" pursuant to the department's Contract Claims Procedure, 43 T.A.C. § 1.68. Section

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<sup>1</sup>In 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.

1.68(b)(6) provides that the proceedings involved are “in nature an attempt to mutually resolve a contract claim without litigation. . . .” We do not believe that these proceedings constitute “litigation” for the purposes of section 552.103. Consequently, we conclude that you have failed to establish that litigation is either pending or reasonably anticipated and, therefore, the requested information must be released to the requestor.

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,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal line extending to the right.

Todd Reese  
Assistant Attorney General  
Open Records Division

RTR/SAB/rho

Ref.: ID# 27159

Enclosures: Submitted documents

cc: Mr. C. M. Tulloch  
Rt. 2, Box 78B  
Harlingen, Texas 78550  
(w/o enclosures)