



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 24, 1997

Mr. Ron M. Pigott  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR97-0153

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 103409.

The Department of Public Safety (the "department") received a request for "complaint information and employment evaluations of Trooper Brian Freeman." You assert that the requested information is excepted from required public disclosure based on Government Code section 552.103.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is 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 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.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception

in a particular situation. The test for establishing that section 552.103 applies is a two-prong 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

You inform us that Trooper Brian Freeman will be a key witness in a criminal trial to revoke the probation of an individual the trooper recently arrested. You also inform us that Mr. Mike Wenk, Assistant District Attorney with the Hay County Criminal District Attorney's Office, has asked the department to not release the requested information because of the pending criminal proceeding. We conclude that you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). The requested records may be withheld.<sup>1</sup>

We are resolving this matter with this 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 may 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 Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 103409

Enclosures: Submitted documents

cc: Ms. Pat Besheer Keegan  
2203 Onion Creek Parkway # 25  
Austin, Texas 78747  
(w/o enclosures)

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<sup>1</sup>If the opposing party in the 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). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).