



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 17, 1997

Ms. Jennifer Soldano  
Associate General Counsel  
Texas Department of Transportation  
DeWitt C. Greer State Highway Building  
125 E. 11th Street  
Austin, Texas 78701-2483

OR97-0868

Dear Ms. Soldano:

You have asked if 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# 104992.

The Texas Department of Transportation (the "department") received a request for

All publications of TXDOT relating to the operation and roles of the agency such as stand alone books, manuals, administrative orders, minute orders, and all other rules and regulations in print from 1989 to the present.

You state that you informed the requestor of the necessity for clarification of his request pursuant to section 552.222 of the Government Code and that the requestor for the most part refused to narrow his request.<sup>1</sup> You assert that because the request is so broad, it is difficult to determine if some of the requested documents are relevant to his lawsuit and therefore excepted under section 552.103. We have reviewed your request and the submitted petition.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the 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 shown that litigation involving the department is pending. You submitted to this office a document

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<sup>1</sup>We note that the department is not required to provide copies of information that is commercially available to the public. Gov't Code § 552.027(a). However, section 552.027(c) of the Government Code provides that a governmental body must allow public access to "information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy" of the governmental body.

titled *Crawford Heavy & Marine Construction, LTD and R.C. Crawford III v. Donald McDonald, Construction Performance, et al.*, Cause No. 95-13123 (201st Dist. Ct., Travis County, Tex., 1995). The petition alleges, among other allegations, Open Records violations. Although you meet the first prong in establishing that there is litigation, it is not clear that the information at issue is related to the instant litigation. The information requested if disclosed or adopted in a public meeting is public information. See Open Records Decision No. 551 (1990). If the document has been made public, no portion of it may then be withheld from disclosure pursuant to section 552.103(a). Accordingly, we conclude that the department has not met its section 552.103 burden, and must therefore disclose the requested information.

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,



Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/alg

Ref.: ID# 104992

Enclosures: Submitted documents

cc: R.C. Crawford  
3016 Overland  
Round Rock, Texas 78761  
(w/o enclosures)