



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 8, 1997

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

OR97-1546

Dear Mr. Stenger-Castro:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 106920.

The Texas Workers' Compensation Insurance Facility (the "facility") received a request for 34 categories of information. The request seeks investigation material, employee information, and outside counsel approval concerning several named companies and individuals. The request also seeks facility information concerning temporary labor companies and the minutes of the facility from 1987 to date. You claim that the requested information is excepted from required public disclosure by sections 552.101, 552.103, 552.107, and 552.111. We have considered the exceptions you claim and have reviewed the sample of documents that you have submitted.<sup>1</sup>

Initially, we recognize that the official records of the public proceedings of a governmental body are among the most open of records. We do not believe, therefore, that the minutes that you have submitted may be withheld under the Open Records Act. Open Records Decision No. 221 (1979) at 1; *see also* Open Records Decision No. 551 (1990) at 2-3 (laws or ordinances are open records).

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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.

We will now consider whether the remaining information may be withheld. Section 552.103(a) excepts from 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 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. The test for meeting this burden is a 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, 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 information to be excepted under 552.103(a).

You state that the facility is currently involved in pending litigation. *Workers' Compensation Ins. Fac. v. Industrial Labor Sys., Inc., et al.*, No. 94-01996 (229th Dist. Ct. Travis County, Tex.). You explain that the subject matter of this request involves the subject matter of the lawsuit as well as the named parties in the suit. You have provided this office with the petitions in the pending suit. After examining the submitted materials, we conclude that the requested information relates to the pending litigation. You may, therefore, withhold the information requested in items 2-34 under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Because we are able to make a determination under section 552.103, we do not address your additional arguments against disclosure. We note, however, that some of the requested information may be confidential by law and may not be disclosed even after litigation has concluded.

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,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref: ID# 106920

Enclosures: Submitted documents

cc: Mr. Carlos M. Gardea  
111 Cloverleaf  
San Marcos, Texas 78666  
(w/o enclosures)

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