



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 10, 1997

Major Foy Watson, Judge Advocate  
Adjutant General's Department  
The State of Texas  
P.O. Box 5218  
Austin, Texas 78763-5218

OR97-2022

Dear Major Watson:

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# 108402.

The Adjutant General's Department received a request for the complete files of specified individuals. The Adjutant General's Department seeks to withhold the requested information based on sections 552.101 and 552.103 of the Government Code. You enclosed representative samples of the information the Office of the Governor seeks to withhold.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The Adjutant General's Department 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 Adjutant General's Office must meet both prongs of this test for information to be excepted under section 552.103(a).

You assert that litigation is pending in the cause styled as *Steven S. Adams v. Adjutant General's Department - Texas*, Cause No. 229,152 before County Court at Law No. 2, Travis County, Texas. A facsimile letter from Peter B. Plotts, an assistant attorney general states, "I have reviewed the Open Records Request of the Adjutant General's Department of Texas concerning Mr. Adams. In my opinion, the request relates directly to the pending litigation initiated by Mr. Adams against the Adjutant General's Department of Texas." Accepting this assertion we then proceed to the second prong of section 552.103 which requires a

showing that the information at issue is related to that litigation. A review of the documents shows that the information requested is related to the pending litigation. Therefore, the department may withhold the requested documents under section 552.103. We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for 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 has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).<sup>1</sup>

As we resolve the issues under section 552.103, we need not address the other argument against disclosure. 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,



Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/glg

Ref.: ID# 108402

Enclosures: Submitted documents

cc: Mr. Steven Adams  
600 Barwood Park # 1723  
Austin, Texas 78753  
(w/o enclosures)

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<sup>1</sup>We also note the presence of some information which may be confidential by law and may not be released after litigation has concluded.