



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 16, 1998

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

OR98-0166

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111852.

The Texas Department of Transportation (the "department") received a request for a copy of all daily logs, inspection reports, incident reports, and photographs regarding the BR 97 (248) project on the Farm-to-Market Road 4 in Palo Pinto County, generated between June 1, 1997 and September 1, 1997. You claim that the requested information is excepted from disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the sample documents you have submitted.¹

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

¹In 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.

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

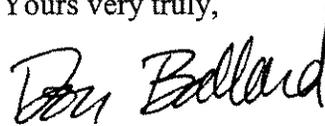
The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related 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 department must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you explain that the department is currently a party in pending litigation. *Gallegos, et al. v. Ellis-McGinnis Constr. Co., et al.*, (98th Dist. Ct., Travis County, Tex., Sept. 11, 1997). You have provided this office with a copy of the Original Petition in that case. After reviewing the submitted materials and your arguments, we conclude that you have shown that litigation is pending and that the requested documents relate to the litigation. You may withhold the remaining requested information 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). 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).

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# 111852

Enclosures: Submitted documents

cc: Mr. Jerry D. Bullard
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(w/o enclosures)