



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 6, 1998

Ms. Joanne Wright
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 E. 11th Street
Austin, Texas 78701-2483

OR98-0360

Dear Ms. Wright:

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# 112402.

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

- (1) names of all individuals employed or assigned to the Bastrop District Maintenance Department, Bastrop, Texas between January 1, 1994 through November 1, 1997.
- (2) dates of such individuals' employment at the Bastrop District Maintenance Department from January 1, 1994 through November 1, 1997.
- (3) names of all persons transferred into the Bastrop District Maintenance Department between January 1, 1994 through November 1, 1997.
- (4) a list of salaries/wages of all persons listed above as of January 1, 1994 through November 1, 1997.
- (5) a list of all changes to the salaries/wages and the dates these changes were made to the individuals listed above employed at the Bastrop District Maintenance Department since January 1, 1994 through November 1, 1997.

You assert that the information is excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the governing body is or may be a party. The governing body 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 governing body must meet both prongs of this test for information to be excepted under section 552.103(a).

You supplied this office with a copy of a petition filed against the department in United States District Court in which the plaintiff complains of alleged discrimination on the basis of race and sex. Therefore, you have shown that litigation is pending. Upon review of the information submitted, we conclude that a portion of the information is related to the pending litigation and may be withheld from disclosure under section 552.103(a). We have marked this information for your convenience. The remainder of the requested information must be released to the requestor.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 112402

Enclosures: Submitted documents

cc: Mr. Elmer Harrison
Post Office Box 4886
Lago Vista, Texas 78645
(w/o enclosures)