



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 11, 1998

Mr. Ron Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR98-0674

Dear Mr. Pigott:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 113699.

The Texas Department of Public Safety (the "department") received a request for an investigative report. You submitted to this office for review representative samples of the investigation documents.¹ You assert that the documents at issue are protected from disclosure under section 552.103(a) of the Government Code. We note that the documents you submitted include accident report forms that may be disclosed only as provided under section 47 of article 6701d, V.T.C.S.² See Transp. Code § 550.064 (officer's accident report). However, we will address the applicability of section 552.103(a) to the remaining information.

¹We 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 No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²The Seventy-fifth Legislature repealed V.T.C.S. article 6701d, and amended section 550.065 of the Transportation Code concerning the disclosure of accident report information. Act of May 29, 1997, 75th Leg., R.S. ch. 1187, 1997 Tex. Sess. Law Serv. 4575 (Vernon). However, a Travis County district court has issued a temporary injunction enjoining the enforcement of the amendment to section 550.065 of the Transportation Code. *Texas Daily Newspaper Ass'n, v. Morales*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., Oct. 24, 1997) (second amended agreed temporary injunction). A temporary injunction preserves the status quo until the final hearing of a case on its merits. *Janus Films, Inc. v. City of Fort Worth*, 358 S.W.2d 589 (1962). The supreme court has defined the status quo as "the last, actual peaceable, non-contested status that preceded the pending controversy." *Texas v. Southwestern Bell Tel. Co.* 526 S.W.2d 526, 528 (Tex. 1975). The status quo of accident report information prior to the enactment of S.B. 1069 is governed by section 47 of article 6701d, V.T.C.S.

Section 552.103(a) provides an exception to disclosure for 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.

To show that section 552.103(a) is applicable, a governmental body must show that the records at issue are related to pending or reasonably anticipated 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 submitted to this office a copy of a petition showing that the department is involved in pending litigation. We have reviewed the submitted information and agree that it is related to the pending litigation.

Section 552.103(a) also requires that either the attorney general or the governmental body's attorney make a determination that the requested information should be withheld from public release. You state that the department has "not yet been notified as to which individual Assistant Attorney General has been assigned to the case," and that although you assume that the Assistant Attorney General assigned to the case will want the information withheld, this cannot be verified until the case is assigned.³ We note that section 552.103(a) provides that either the attorney general *or* the governmental body's attorney can make the determination that the requested information should be withheld from disclosure. As you are the governmental body's attorney and because you ask that the information not be disclosed, we assume that you made the initial determination that the requested information should not be disclosed.

You have shown the applicability of section 552.103(a) to the records. We note, however, that once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, you may withhold the records at issue that the opposing party to the anticipated litigation has not seen or had access to. We note that the applicability of section 552.103(a) also ends once the litigation concludes. 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

³Since section 552.103(a) can be waived by the governmental body, the attorney representing the governmental body could opt to release any of the submitted information that is not otherwise confidential. See Open Records Decision No. 541 (1990).

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 113699

Enclosures: Submitted documents

cc: Mr. Trae Monroe
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(w/o enclosures)