Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 10, 1998

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

OR98-1424

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 116645.

The Texas Department of Transportation (the "department") received a request for "the full identification of the design firm) and construction company(ies) to the [department] for the respective work performed on the section of I-20, vicinity mile marker 495." You assert that the requested information is excepted from required public disclosure based on section 552.103 of the Government Code. You have submitted a representative sample of the requested information.[1]

Section 552.103(a) of the Government Code reads as follows:

> (a) Information is excepted from [required public disclosure] if it is 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

[1]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) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). The fact that a governmental body received a claim letter that it represents to the attorney general to be in compliance with the notice requirements of the Texas Tort Claims Act, Civil Practice and Remedies Code chapter 101 shows that litigation is reasonably anticipated. Open Records Decision No. 638 (1996).

You state that the department received a notice of claim that meets the notice requirement of the Texas Tort Claims Act. Thus, you have established that litigation is reasonably anticipated. The requested information relates to the litigation. In this instance, you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). The requested records may be withheld.[2]

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,

Kay Hastings
Assistant Attorney General
Open Records Division

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[2]If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now 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 is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Ref.: ID# 116645

Enclosure: Submitted document

cc: Mr. David D. Davis
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(w/o enclosure)