



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 24, 1998

Mr. Gregory T. Simpson  
Director  
Employment and Administrative Law Section  
Texas General Land Office  
1700 North Congress Avenue  
Austin, Texas 78701-1495

OR98-1529

Dear Mr. Simpson:

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# 116005.

The General Land Office received a request for eighteen categories of information concerning the collection of royalties on state owned property. The requestor also seeks information concerning a particular lawsuit, *Texas General Land Office, et al v. Amoco Production Company, et al*, No. 95-08680 (345<sup>th</sup> Dist. Ct., Travis County, Tex., filed July 14, 1995). You argue that much of the requested information is excepted from disclosure by sections 552.101, 552.103, 552.107, and 552.116 of the Government Code. We have considered the arguments you have made and have reviewed the sample documents that you have submitted.<sup>1</sup>

Initially, you state that no responsive information exists for request numbers 1, 10, 11, 14, 17 or 18. You indicate, however, that a book authored by Commissioner Mauro may be responsive to some of these requests, *Beaches, Bureaucrats and Big Oil*. You inform us, however, that the book is commercially available. See Gov't Code § 552.027 (excepting from disclosure materials commercially available to the public). You also state that you will release all information responsive to request items 9, 12, 13, 15, and 16. You additionally

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<sup>1</sup>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). 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.

inform us that you will release all information responsive to request items 2, 3, 4, 5, 6, 7, and 8 to the extent the documents were globally produced to all opposing parties in the pending lawsuit with several major oil and gas companies. As for all remaining responsive information in request items 2 through 8, you claim that this information is excepted from disclosure by sections 552.101, 552.103, and 552.107 of the Government Code.

We will first address your argument under section 552.103. 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

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

The governmental 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 governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

You state that the General Land Office is currently involved in litigation. You have provided this office with a copy of the Original Petition in that case. *Texas General Land Office, et al v. Amoco Production Company, et al*, No. 95-08680 (345<sup>th</sup> Dist. Ct., Travis County, Tex., filed July 14, 1995). After reviewing the submitted materials, we find that requested documents you seek to withhold under request items 2 through 8 relate to the pending litigation. You may withhold the 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). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Again, you have indicated that you will release all information responsive to the request which has been produced to all opposing parties in the pending lawsuit. Further, we note that 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). However, because some of the requested information may be confidential by law, it must not be

released even after litigation has concluded. If you receive a subsequent request for the information, you should re-assert your arguments against disclosure at that time. Gov't Code § 552.352 (distribution of confidential information is criminal offense).

Because we make a determination under section 552.103, we do not address your additional arguments against disclosure at this time. 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref.: ID# 116005

Enclosures: Submitted documents

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(w/o enclosures)