



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 17, 1998

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

OR98-1694

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# 116989.

The Texas Department of Transportation (the "department") received an open records request for "all files on the Intersection of 61st and Andrews Hwy. for the years of 1992, 1993, and 1997." You contend that the requested records may be withheld from the public pursuant section 552.103 of the Government Code.

To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. In this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103. The department therefore may withhold the records at this time.¹

¹We note that among the documents submitted to this office are several "Texas Peace Officer's Accident Reports." Section 47(b)(1) of article 6701d, V.T.C.S. provides that this type of accident report must be released to, among others, any individual who provides two or more of the following categories of information: the date of the accident, the name of any person involved in the accident, or the specific location of the accident. *See Texas Daily Newspaper Ass'n v. Morales*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., Aug. 29, 1997) (order granting temporary injunction enjoining enforcement of Transportation Code section 550.065). If the requestor provides such information to the department in compliance with section 47(b)(1), these accident reports may not be withheld pursuant to section 552.103. *See* Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976) (information specifically made public by statute may not be withheld from public pursuant to Open Records Act's exceptions to public disclosure).

In reaching this conclusion, however, we assume that the opposing party to the litigation or his attorney has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103 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,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/RWP/nc

Ref.: ID# 116989

Enclosures: Submitted documents

cc: Mr. Ernest Byer
7133 W. Dunn
Odessa, Texas 79763
(w/o enclosures)