



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 14, 1998

Ms. Jennifer D. Soldano  
Associate General Counsel  
Texas Department of Transportation  
125 E. 115<sup>th</sup> Street  
Austin, Texas 78701-2423

OR98-3098

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 120452.

The Texas Department of Transportation (the "department") received a request for information that concerns "the enactment of the weight limit restrictions on Farm-to-Market Road 4 in Palo Pinto County." The requestor asks, "what was the purpose behind the weight limit restriction enactment, or who are the correct individuals and/or entities with whom I should speak with (sic) regarding the same." The document submitted by you as a representative sample of documents responsive to the request, a map that appears to include Farm to Market Road 4 in Palo Pinto County with a legend of the weight, width and vertical clearance capabilities, does not appear to be responsive to this request. This document does not address the purpose of the weight restrictions or identify the individuals who know about the purpose of weight restrictions.<sup>1</sup>

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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) (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.

You assert that the requested information is excepted from disclosure based on section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents submitted to us.

When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation.<sup>2</sup> Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation to which the governmental body is a party is either pending or reasonably anticipated, and that (2) the requested information relates to that litigation. *See 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 at 4 (1990). In this instance, you represent that the department is being sued and included in your submission a copy of a previous letter ruling from this office applying the litigation exception to information related to this litigation, Open Records Letter No. 98-0166 (1998). You state that the "litigation that was used to form the exception in OR 98-0166 is ongoing . . . . It is clear that the request concerns facts directly related to the petition, a matter concerning which TXDOT is being sued."<sup>3</sup> Based on the petition and your statement that "the request concerns facts directly related to the petition," this office infers that all of the facts concerning the capabilities of Farm-to-Market-Road 4 in Palo Pinto County are related to the litigation. Therefore, at this time you may withhold the requested information.

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

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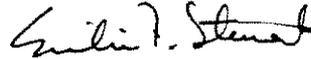
<sup>2</sup>Section 552.103(a) excepts from required public disclosure information:

- (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.

<sup>3</sup>To meet the second prong of the section 552.103(a) exception, a governmental body must explain how the requested information relates to the subject of the litigation. Simply referring to the cause number of a pending case does not establish that the requested information relates to that case. The submission of the petition in a pending case may assist this office in the assessment of the relatedness of the requested information to the subject of the pending litigation. However, we do not believe that a governmental body has necessarily established that requested information relates to pending litigation by just submitting a petition. A governmental body should in every case explain or describe how the requested information relates to the pending litigation. Open Records Decision No. 638 at 4 (1996)

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,



Emilie F. Stewart  
Assistant Attorney General  
Open Records Division

EFS\nc

Ref: ID# 120452

Enclosures: Submitted documents

cc: Mr. Joe W. Soward II  
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(w/o enclosures)