



May 26, 1999

Ms. Regina Grimes
Texas Department of Criminal Justice
8610 Shoal Creek
Austin, Texas 78758

OR99-1459

Dear Ms. Grimes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124433.

The Texas Department of Criminal Justice ("TDCJ") received a request for a cassette tape and Regional Director Billy Linson's Final Report that was forwarded to Division Director Veronica Ballard. You have furnished the requestor with the cassette tape. You submit to this office the responsive Final Report. You claim that the Final Report is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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.

TDCJ 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. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *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). TDCJ must meet both prongs of this test for information to be excepted under 552.103(a).

This office has held that a pending complaint before the EEOC indicates a substantial likelihood of litigation relating to the complaint. Open Records Decision No. 336 at 1 (1982). Similarly, a contested case under the Administrative Procedure Act is litigation for purposes of section 552.103. Open Records Decision No. 588 (1991). Nevertheless, litigation cannot be regarded as "reasonably anticipated" unless we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982).

You state that the requestor

is expressly included in a complaint to the U.S. Department of Labor ("DOL") regarding the overtime hours worked at the Paris Parole Office ("PPO") by certain TDCJ employees. This complaint resulted in a DOL investigation which is currently being conducted by Ms. Glynda S. Smith of the DOL

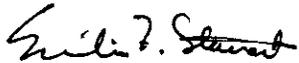
You also state, "[a]dministrative claims for reimbursement by the DOL are currently pending." The claims of the DOL create a substantial likelihood of litigation regarding overtime worked at the Paris Parole Office. TDCJ has met both prongs of the section 552.103(a) test. Therefore, TDCJ may withhold the Final Report.

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). 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. Further, 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).¹

¹Having ruled on the information at issue under section 552.103, we do not address the application of other exceptions to disclosure. If you receive another request for this information after the litigation has been concluded, you should seek a ruling from this office as to the confidentiality of the requested information under other provisions of Chapter 552. See Gov't Code §§ 552.352, 552.117.

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.

Sincerely,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 124433

encl: Submitted documents

cc: Ms. Tracy C. Broadway
Senior District Parole Officer
2673 North Main, Suite F
Paris, Texas 75460
(w/o enclosures)