



October 21, 1999

Ms. Joanne Wright
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR99-2975

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128825.

The Texas Department of Transportation (the "department") received a request for: 1) information concerning a meeting of Representative Longoria and Mr. Heald, executive director of the department, that occurred on February 22, 1999, and 2) any records concerning the department and Mr. Velentin Arreguin, president of Inca Contractor's, Inc. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show 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 (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). The department must meet both prongs of this test for information to be excepted under section 552.103(a).

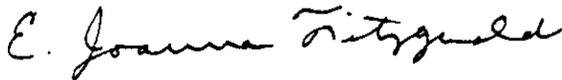
You explain that Mr. Romo, the requester in this case, is a former employee who has filed an employment discrimination suit against the department. Furthermore, you have submitted a copy of Mr. Romo's petition filed against the department, as proof of Mr. Romo's suit against the department. *Romo v. Texas Dep't of Transp.* No. 98CI-01350 (37th Dist. Ct.,

Bexar County, Tex., filed Jan. 28, 1998). Therefore, we find that you have shown that litigation involving the department and Mr. Romo is pending. We have reviewed the submitted documents and agree that they are related to the pending litigation. Thus, the department may withhold the submitted documents from disclosure under section 552.103.

In reaching this conclusion, however, we assume that the opposing party in the anticipated litigation 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 interest under section 552.103 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 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.¹ 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,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 128825

Encl: Submitted documents

cc: Mr. David Romo
3903-A Valleyview
Austin, Texas 78704
(w/o enclosures)

¹Because section 552.103 is dispositive of this matter, it is not necessary to address your argument regarding section 552.107.