



November 17, 1999

Ms. Anne M. Constantine
Legal Counsel
Dallas/Fort Worth International Airport
P.O. Drawer 619428
DFW Airport, Texas 75261-9428

OR99-3295

Dear Ms. Constantine:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130148.

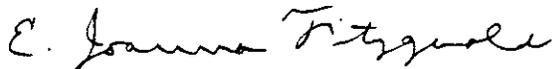
The Dallas-Fort Worth International Airport Board (the "Board") received requests for the following information: 1) copies of all electronic mail that mention John Holsopple, payroll deduction and/or the Texas Public Workers Association that have been received by Jeff Fegan, Anne Constantine, Tomas Rivera, Gayle Lacerda, Vernon Evans, Jim Crites and Ken Kenvin; and 2) copies of all requests for payroll deduction, and related correspondence. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception 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). Moreover, section 552.103 excepts information "only if the litigation is pending or reasonably anticipated on the date that the requestor applies to . . . [the governmental body] for access to or duplication of the information." Act of May 25, 1999, 76th Leg., R.S., ch 1319, § 6, 1999 Tex. Sess. Law Serv. 4500, 4502 (Vernon) (to be codified as TEX. GOV'T CODE § 552.103(c)). The Board must show that each element is satisfied in order for information to be excepted under section 552.103(a).

You explain that litigation is reasonably anticipated due to the content of a letter sent to you by the requestor's attorney. In the letter, the attorney states that his client has instructed him "to immediately file suit against DFW Airport." However, the requests for information were sent to the Board via two pieces of electronic mail, both dated September 21, 1999. The attorney's letter on which you base your argument is dated September 23, 1999 and was received by the Board on September 24, 1999. Therefore, we conclude that the Board has failed to show that litigation was reasonably anticipated on September 21, 1999, the date that the requestor applied to the Board for the information. Because the Board has not met its burden, section 552.103 does not except the requested information. Accordingly, the information must be released to the requestor.

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,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF/nc

Ref: ID# 130148

Encl. Submitted documents

cc: Mr. Todd Comitini
Executive Director
Texas Public Workers Association
622 West Main Street, Suite 200A
Arlington, Texas 76010
(w/o enclosures)