



November 19, 1999

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

OR99-3328

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# 128980.

The Texas Department of Transportation (the “department”) received a request for 1) “all photographs, video, audio, electronic media and the like of Mr. David Romo, . . . , distributed for employee informational and training purposes to Texas Department of Transportation Districts” and 2) information concerning HUB contracting. You explain that you have no information responsive to item 2. You claim that information responsive to item 1 is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted videotape.

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).

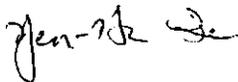
You inform us that litigation is pending and supplied this office with a copy of the petition. The litigation concerns an allegation of employment discrimination by the department. We have considered your arguments and conclude that you have shown that litigation is pending.

Additionally, you have shown that a portion of the videotape is related to the subject of such litigation. Thus, you may withhold the portion of the videotape you seek to withhold under section 552.103. You must release the remainder of the videotape because you have not explained how the remainder of the videotape relates to the litigation.

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). Thus, 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. We also note that the applicability of section 552.103(a) 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. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/ljp

Ref.: ID# 128980

Encl. Submitted videotape

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