



August 1, 2000

Mr. Ken Stewart  
Associate General Counsel  
Texas Department of Transportation  
P.O. Box 2293  
Austin, Texas 78768

OR2000-2901

Dear Mr. Stewart:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137565.

The Department of Transportation (the "department") received a request for information relating to an accident involving a barge. The requestor specifies the time and place of the accident. You indicate that you will release a responsive accident report, as well as all other items previously provided to this to the requestor. However, you seek to withhold additional responsive information which you claim is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. You have submitted the information you seek to withhold, identified as Exhibit B. We have considered the exceptions you claim and reviewed the submitted information.

We first note that the submitted materials include a "Statement of Repair" which itemizes the costs of repairing "Damage to I-Beams and Lift Lever Arms." We are of the opinion that this items falls within the ambit of section 552.022(a) the Government Code. In pertinent part this section provides

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

- (3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body

- ...
- (5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate.

As the exceptions that you raise do not make such information “expressly confidential under other law,” this item must be released. We find that the remaining information falls within the ambit of section 552.103, as discussed below.

Section 552.103(a), the “litigation exception,” excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. To secure the protection of section 552.103(a), a governmental body has the burden of providing relevant facts and documents to 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, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Further, to be excepted under section 552.103, the information must relate to litigation that is pending or reasonably anticipated on the date that the information was requested. Gov't Code § 552.103(c). Information that the opposing party has had previous access to is not excepted from disclosure by section 552.103(a) of the Government Code. Open Records Decision No. 349 (1982).

You have supplied the citation and original petition in the case styled *Preferred Marine LLC v. Texas Department of Transportation*, and cause numbered 99-J-0273-C. This case was filed in the 130<sup>th</sup> District Court, in Matagorda County on May 25, 1999. You relate that the current request for information was received May 15, 2000. From our review of the submitted materials we conclude that they relate to this pending litigation. You also relate that the submitted materials have not been disclosed or made available to the adverse party. We conclude that you have demonstrated that the submitted information is excepted from public disclosure under section 552.103(a) of the Government Code. You may withhold this information at this time. Note, however that 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).

In conclusion, you must release the submitted “Statement of Repair” and may withhold the remainder of the submitted information during the pendency of this litigation.

As section 552.103 resolves this request, your arguments under other sections of the Government code are not addressed. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not

be relied upon as a previous determination regarding any other records or any other circumstances.

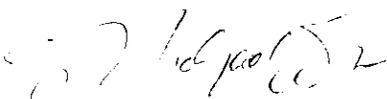
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/ljp

Ref: ID# 137565

Encl Submitted documents

cc: Mr. Walter Gallant  
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(w/o enclosures)