



August 11, 2000

Ms. Janice Marie Wilson  
Associate General Counsel  
Texas Department of Transportation  
125 E. 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2000-3056

Dear Ms. Wilson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138142.

The Texas Department of Transportation (the "department") received a written request for all records pertaining to Sign Permit No. 04219. You contend that the requested information is excepted from disclosure under section 552.103 of the Government Code.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). Additionally, the governmental body must demonstrate that the litigation was pending or reasonably anticipated as of the day it received the records request. Gov't Code § 552.103(c).

This office has determined that a contested case under the Administrative Procedure Act (the "APA"), Government Code chapter 2001, constitutes "litigation." See Open Records Decision Nos. 588 (1991) (former State Board of Insurance proceeding), 301 (1982) (hearing before Public Utilities Commission). In this instance, you have demonstrated that the requested information pertains to a pending administrative hearing before the Texas Transportation Commission. Such administrative hearings constitute contested cases subject to the APA. See 43 T.A.C. § 1.24. Accordingly, we conclude that you have demonstrated that litigation regarding the sign permit is currently pending. Furthermore, after reviewing the documents at issue, we conclude that the records at issue "relate" to that litigation for purposes of section 552.103.

This does not, however, end our discussion of the applicability of section 552.103. We note that the opposing party to the litigation has had prior access to some of 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 section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Because the opposing party in the litigation has seen or had access some of the records at issue, there is no justification for now withholding that information from the requestor pursuant to section 552.103.<sup>1</sup> We have placed blue flags on the four documents that the department must release to the requestor. The remaining documents may be withheld at this time pursuant to section 552.103 of the Government Code.

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

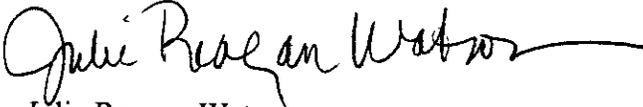
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<sup>1</sup>We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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,

A handwritten signature in black ink that reads "Julie Reagan Watson". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Julie Reagan Watson  
Assistant Attorney General  
Open Records Division

JRW/RWP/ljp

Ref: ID# 138142

Encl. Submitted documents

cc: Mr. Eric A. Hillerman  
Sprouse, Smith & Rowley, P.C.  
P.O. Box 15008  
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(w/o enclosures)