



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 17, 1995

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

OR95-1083

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36015.

The Department of Transportation (the "department") received a request for copies of "the State's logs" concerning a certain contract. You assert that the information that is "arguably responsive"¹ to this request is excepted from disclosure by section 552.103 of the Government Code and have submitted documents to us for review. You state that these documents relate to a contractor claim against the department for payment of additional money. You further advise that the claim is being handled under the department's claim procedures, as set forth in 43 Texas Administrative Code, section 1.68.

Section 552.103(a) of the Government Code excepts from disclosure information:

¹A governmental body must make a good faith effort to relate a request to information that it holds. Open Records Decision No. 561 (1990) at 8. If a request for information is unclear, a governmental body may ask the requestor to clarify the request. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. 5134 (to be codified at Gov't Code § 552.222(b)); *see also* Open Records Decision No. 561 (1990) at 8. A governmental body is required, however, to make a good faith effort to advise the requestor of the types of documents available that may be responsive to the request. Open Records Decision No. 87 (1975) at 3.

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Under the department's contract claims procedure, a claim for additional compensation arising out of a contract between the department and a contractor may be informally resolved by committee. 43 T.A.C. § 1.68. This committee is to "gather information, study, and meet informally with contractors" to resolve disputes. *Id.* § 1.68(b)(1). These proceedings "*are in nature an attempt to mutually resolve a contract claim without litigation* and are not admissible for any purpose" in an administrative hearing. *Id.* § 1.68(b)(6) (emphasis added). Section 552.103(a) requires "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 (1986) at 4. The contract claims procedure is not litigation for purposes of section 552.103(a). You have presented no evidence showing that this issue will proceed to litigation, nor has litigation been threatened. Therefore, the requested information may not be withheld from disclosure under section 552.103(a).

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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/rho

Ref.: ID# 36015

Enclosures: Submitted documents

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