



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 20, 1995

Mr. Alberto Gonzales
General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR95-1501

Dear Mr. Gonzales:

Your office has asked whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned this request ID# 31380.

The Office of the Governor (the "governor") received a request for information relating to a special investigation of discrimination in the Texas National Guard. Specifically, the requestor seeks:

A complete copy of the report of and evidence generated by Mr. Juan J. Hinojosa as special investigator appointed by the Governor in or about June 1992 to investigate allegations of discrimination in the Texas National Guard, including all documents and records of any kind comprising or generated by that investigation, including but not limited to appointment letters or memoranda, witness statements of all kinds, tape recordings, computer files, phone records, reports of investigation with all exhibits, attachments, and enclosures, and any physical evidence such as maps or diagrams.

You assert that the information at issue is excepted from disclosure pursuant to section 552.103(a) of the Government Code.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). You have submitted to this office a petition that shows there is ongoing litigation. Our review of the records at issue shows that the records are related to the subject matter of the pending litigation. In this instance, you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a).

However, you may not withhold from disclosure information that the opposing parties to the litigation have already had access to. 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). If the opposing parties to the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation concludes. 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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/rho

Ref.: ID# 31380

Enclosures: Submitted documents

cc: Mr. David Van Os
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(w/o enclosures)