



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 11, 1996

Mr. Frank Stenger-Castro
General Counsel
Texas Workers' Compensation Insurance Facility
8303 MoPac Expressway North - Suite 310
Austin, Texas 78759-8396

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OR96-2357

Dear Mr. Stenger-Castro:

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# 37201.

The Texas Workers' Compensation Insurance Facility (the "Facility") received a request for the appeals files relating to two companies, All Star Sheet Metal & Roofing Company ("All Star") and Seyforth Roofing Company, Inc. ("Seyforth"). You assert the information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code, and that 552.101, 552.104 and 552.110 may apply as well. You enclosed representative samples of the requested information.¹

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. The Facility has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *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 (1990) at 4. The Facility must meet both prongs of this test for information to be excepted under section 552.103(a).

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You assert the information relating to All Star is excepted under 552.103 because a judicial review proceeding involving the company is currently pending in state district court. Included in the information submitted is a copy of "Plaintiff's Original Petition for Judicial Review" filed in the 201st Judicial District Court of Travis County, Texas, listing All Star as plaintiff and the Facility as one of three defendants. The Facility has thus met its burden in establishing pending litigation with All Star. After reviewing the documents at issue, we conclude the information requested is related to that litigation.

You have also submitted copies of documents relating to litigation between the Facility and Seyforth which is pending before the State Office of Administrative Hearings, docket no. 454-94-365. A contested case under the Administrative Procedure Act is litigation for purposes of section 552.103(a). Open Records Decision No. 588 (1991). You have therefore met your burden in establishing pending litigation with Seyforth as well. Our review of the documents pertaining to Seyforth indicates they are related to that litigation and thus they may be withheld from disclosure under section 552.103.

We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) generally ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).²

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

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Ref.: ID# 37201

²As we resolve your request under section 552.103, we need not address the other arguments you raise. However, because the protection afforded by section 552.103 ends once the litigation has been concluded, you may, resubmit your arguments under 552.101, 552.104, 552.110 and 552.111 at that time.

Enclosures: Submitted documents

cc: Trey Gillespie
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(w/o enclosures)