



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 22, 1997

Mr. Ron Pigott
Assistant General Counsel
Texas Department of Public Safety
5805 N. Lamar Blvd.
Box 4087
Austin, Texas 78773-0001

OR97-0900

Dear Mr. Pigott:

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# 105183.

The Texas Department of Public Safety (the "department") received a request for any and all information pertaining to the August 27, 1993 incident in which Trooper Raul Vargas fatally shot Mr. Leonel Bazan. You assert that the requested information is excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered your arguments and have reviewed the sample information submitted.¹

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the governing body is or may be a party. The department 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 department 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 samples" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 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 inform us that the heirs of Mr. Bazan have filed suit against both Trooper Vargas and the department, and that the lawyer representing the department, Karen Matlock, Assistant Attorney General, has advised that she wants no records, other than those previously filed with the court, to be released from your files. You have thus met your burden in establishing that litigation is pending. After reviewing the information submitted, we conclude that it is related to the litigation and may therefore be withheld from disclosure under section 552.103(a). We note, however, 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) ends once the litigation has been concluded. 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 105183

Enclosures: Submitted documents

cc: Ms. Kathryn M. Flagg
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6310 N. Tenth Street
McAllen, Texas 78504
(w/o enclosures)