



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 25, 1997

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

OR97-0938

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# 105088.

The Texas Department of Transportation (the "department") received a request for certain statistical information regarding department personnel. However, the department seeks to withhold portions of the requested information based on sections 552.101 and 552.103 of the Government Code. You have enclosed marked representative samples of the information the department seeks to withhold.¹

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the 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. You have shown that litigation is pending as you provide the petition styled *Angela J. Evans v. Texas Department of Transportation*, Cause No. 9700721 (250th Dist. Ct., Travis County, Tex., Jan. 21, 1997). In our application of the second prong, our review of the documents at issue shows these records are related to the anticipated litigation. Thus, you may withhold the reports for which you assert the section 552.103(a) exception.²

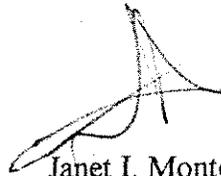
¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize 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.

²As we address your exception under 552.103, we need not address section 552.101.

We note, however, that once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). You may withhold the records at issue that the opposing party to the anticipated litigation has not seen or had access to. The applicability of section 552.103(a) also ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). We note however, that some of the material may be confidential by law and should not be released even after litigation has concluded. *See, Morales v. Ellen*, 840 S.W.2d 519 (Tex.App. --El Paso 1992, writ denied). If the department receives a subsequent request for the information, you should re-assert your arguments against disclosure at that time.

We are resolving this matter with this 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 may 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,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/alg

Ref.: ID# 105088

Enclosures: Submitted marked documents

cc: Ms. Angela J. Evans.
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