



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 5, 1997

Ms. Maria Elena Ramon
Legal Services Division
Texas General Land Office
1700 North Congress Avenue
Austin, Texas 78701-1495

OR97-1022

Dear Ms. Ramon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 105426.

The Texas General Land Office ("GLO") received a request for "any phone call, letters, memos, faxes, directives to or from others, pictures and any written information identifying specific violation by John N. Arrington at 12911 Bermuda Drive, and/or upon beach seaward of." You seek to withhold the documents from disclosure pursuant to sections 552.101, 552.103, 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the sample documents along with the submitted case styled: *Jim Mattox, Attorney General of Texas, on behalf of the People of Texas vs. John M. Arrington, et al*, Cause No. 353, 498 (53rd Dist.Ct., Travis County, Tex., March 28, 1988).¹

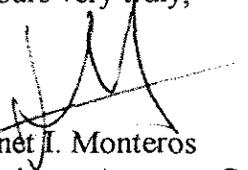
Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The agency has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. 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 agency 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 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 submit for our review a copy of the final summary judgment and mandatory injunction entered against the named defendant in the aforementioned case. The language in the final judgement provides "It is further ORDERED, ADJUDGED and DECREED that the Attorney General shall have all writs of injunction, execution, and any other process necessary to enforce the terms of this judgment and injunction." You indicate the agency is investigating the matter of the defendants' compliance with the mandatory injunction provisions of the final judgment and is contemplating a Motion for Contempt. Based on your assertions, we conclude that litigation is reasonably anticipated. Additionally, after reviewing the submitted documents, we conclude that they are related to the anticipated litigation. Therefore, the agency may withhold the requested documents under section 552.103.² 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) 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,



Janet J. Monteros
Assistant Attorney General
Open Records Division

JIM/alg

Ref: ID# 105426

Enclosures: Submitted documents

cc: Mr. John Arrington
7025 Kopman Drive
Houston, Texas 77061-2709
(w/o enclosures)

²As we address the issues presented under 552.103, we need not address the other exceptions you raise under Government Code sections 552.101, 552.107, and 552.111.