



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 11, 1998

Ms. Jennifer D. Soldano  
Associate General Counsel  
Texas Department of Transportation  
DeWitt C. Greer State Highway Bldg.  
125 E.11th Street  
Austin, Texas 78701-2483

OR98-0675

Dear Ms. Soldano:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#113949.

The Texas Department of Transportation (the "department") received two requests for information. The first request asked for information pertaining to a temporary barrier on Interstate 10 that was struck by a truck, resulting in a fatal accident at the site, and for information pertaining to warning signs and traffic control at the site. The second request asked for a copy of the first request for public information and also for documents supplied to the first requestor. You assert that the documents at issue are protected from disclosure by section 552.103(a) of the Government Code.<sup>1</sup> You submitted to this office for review the responsive documents.<sup>2</sup>

---

<sup>1</sup>Since you have not objected to release of the written request for information, we assume that you provided the second requestor with a copy of the first requestor's public information request letter. This letter thus addresses only the documents that the first requestor has requested and which the second requestor wants as well.

<sup>2</sup>It is unclear from your letter whether these are the actual documents at issue or a representative sample of the requested records. We note that if the records are a sample, this office assumes that they are truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.103(a) exempts from disclosure information:

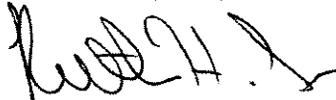
- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

In support of your section 552.103(a) argument, you submitted to this office a petition to perpetuate testimony, which lists the department as a party that may be interested in an anticipated lawsuit against the petitioner, Sunflower Carriers. The petition indicates that the driver of another car who was injured in the accident plans to bring suit against the company that owned the truck. You thus have shown that litigation concerning the accident is reasonably anticipated against Sunflower Carriers, but not that the department can reasonably anticipate being a party to such litigation.

Section 552.103(a) was designed to protect the litigation interests of a governmental body rather than the rights of third parties. Open Records Decision Nos. 588 (1991) at 4; 551 at 3 (1990); 542 at 4 (1990). The exception is not applicable when the anticipated or pending litigation involves only private parties. Open Records Decision No. 575 (1990) at 2. In this situation, the prospect of litigation involving the department is too speculative for section 552.103(a) to be applicable. Open Records Decision No. 518 (1989) at 5 (governmental body must show that litigation involving a specific matter is realistically contemplated). Thus, the requested records must be disclosed.

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/ch

Ref.: ID# 113949

Enclosures: Submitted records

cc: Mr. Dan Feldstein  
Houston Chronicle  
P.O. Box 4260  
Houston, Texas 77210  
(w/o enclosures)

Mr. James Pitcock, Jr., P.E.  
Williams Brothers Construction Co.  
P.O. Box 66428  
Houston, Texas 77266-6428  
(w/o enclosures)