



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 26, 1998

Mr. J. Robert Giddings
The University of Texas System
Office of the General Counsel
201 West Seventh Street
Austin, Texas 78701-2981

OR98-1530

Dear Mr. Giddings:

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# 115968.

The University of Texas System (the "system") received a request for eighteen categories of information concerning the collection of royalties on state owned property. The requestor also seeks information concerning two pending lawsuits, *Texas General Land Office, et al v. Amoco Production Company, et al*, No. 95-08680 (345th Dist. Ct., Travis County, Tex., filed July 14, 1995), and *University of Texas System v. Jose Luna*, No. 3-97-69-CV (Tex. App.--Austin). The system contends that some of the requested information is excepted from disclosure under sections 552.107, 552.111, and 552.116 of the Government Code. The system also contends that certain audits are excepted from disclosure under section 552.101 of the Government Code, in conjunction with section 66.81 of the Education Code. The system stipulates that all information that has previously been released in discovery in the *Amoco* and *Luna* cases will be made available to the requestor.

Additionally, the system contends that some of the requested information constitutes protected attorney work product. In Open Records Decision No. 647 (1996), we concluded that attorney work product may be excepted from disclosure under section 552.103 or section 552.111 of the Government Code. The Assistant Attorney General representing the state in *Amoco* contends that all requested information relating to the *Amoco* case that has not previously been released in discovery is excepted from disclosure under section 552.103 of the Government Code. Likewise, the Assistant Attorney General representing the state in *Luna* contends that all requested information relating to the *Luna* case that has not previously been released in discovery is excepted from disclosure under section 552.103 of the

Government Code. We have considered the exceptions claimed and have reviewed a representative sample of the documents at issue.¹

Initially, you state that no responsive information exists for several categories of the request. We note that the Open Records Act does not require a governmental body to obtain or create new information in order to comply with a request for information. Open Records Decision No. 534 (1989).

Next, we will address the arguments presented under section 552.103 of the Government Code. Section 552.103(a) excepts 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.

The governmental body 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 governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

As mentioned earlier, the state is currently a party to the *Amoco* and *Luna* lawsuits. We have reviewed a copy of the original petition in the *Amoco* case and a copy of the appellant's brief in the *Luna* case. After reviewing the submitted documents, we find that they relate to the pending litigation. Thus, we conclude that the system may withhold these documents from disclosure pursuant to section 552.103(a) of the Government Code.

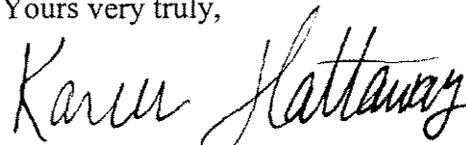
Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that

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.

has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Again, you have indicated that you will release all information responsive to the request which has been produced to all opposing parties in the pending lawsuit. Further, we note that 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). However, because some of the requested information may be confidential by law, it must not be released even after litigation has concluded. If you receive a subsequent request for the information, you should re-assert your arguments against disclosure at that time. *See Gov't Code § 552.352* (distribution of confidential information is criminal offense).

Because we make a determination under section 552.103, we do not address your additional arguments against disclosure at this time. 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 115968

Enclosures: Submitted documents

cc: Mr. John McMahan
President
John McMahan & Associates
9597 Jones Road, Suite 127
Houston, Texas 77065
(w/o enclosures)

Mr. James C. Todd
Assistant Attorney General
General Litigation Division
P.O. Box 12548
Austin, Texas 78711
(w/o enclosures)

Ms. Priscilla M. Hubenak
Assistant Attorney General
Natural Resources Division
P.O. Box 12548
Austin, Texas 78711
(w/ Submitted documents)