



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 10, 1998

Ms. Joanne Wright  
Acting Deputy General Counsel  
Texas Department of Transportation  
125 E. 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR98-1641

Dear Ms. Wright:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116674.

The Texas Department of Transportation (the "department") received a request for four categories of information concerning the design and construction of Loop 1604. You state that the department does not have information responsive to three of the categories of requested information. We note that the department has an obligation to make a good faith effort to locate requested records. Open Records Decision No. 561 (1990) at 8. However, the department is not obligated to provide information which is not in its possession or to compile new information in response to this request. Open Records Decision Nos. 561 (1990) at 9 (governmental body does not have to obtain new information); 483 (1987) at 2; 452 (1986) at 3 (open records request applies to information in existence when request is received); 362 (1983) at 2 (governmental body does not have to supply information which does not exist). You state that the department has documents responsive to one portion of the request, for "plans and profiles currently being used by Hunter Industries for the construction of Loop 1604 from Bandera Road to Culebra Road." However, you assert that these documents are excepted from disclosure pursuant to section 552.103 of the Government Code. The documents at issue were submitted to this office for review.

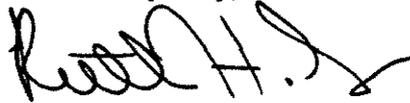
To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You submitted to this office information showing that there is pending litigation involving the department. We agree that the documents at issue are related to the subject of the pending litigation.

We note that the requestor asserts in her letter to the department that certain plans concerning the construction were previously disclosed at a public hearing and also were

previously seen by the requestor. If any of the documents at issue were disclosed in a public hearing, those documents are public and may not be withheld from disclosure under section 552.103. Open Records Decision No. 221 (1979) at 1 ("official records of the public proceedings of a governmental body are among the most open of records"). We also note that section 552.103(a) is generally inapplicable once information has been obtained by all parties to the litigation. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, if the requestor, who is the opposing party in the pending litigation, had access to any of the documents at issue, section 552.103(a) would not generally be applicable to those documents. The records at issue otherwise may be withheld from disclosure under section 552.103(a).<sup>1</sup>

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# 116674

Enclosures: Submitted documents

cc: Ms. Pearl Cavazos Hawkins  
8255 Misty Willow  
San Antonio, Texas 78250  
(w/o enclosures)

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<sup>1</sup>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).