

January 25, 1999

Mr. Frank Crull  
Assistant General Counsel  
Texas Department of Public Safety  
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Austin, Texas 78773-0001



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OR99-0228

Dear Mr. Crull:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121435.

The Texas Department of Public Safety (the "department") received a request for "information concerning any and all administrative charges/internal affairs investigations" of five named troopers. The requestor also seeks "a copy of the Department of Public Safety's written procedures, orders, policies or reference manuals regarding high speed pursuits and the use of deadly force." You contend that the department's files on Troopers Earl Conaway and Larry Hancock are excepted from disclosure pursuant to section 552.103 of the Government Code because the department is involved in active litigation concerning these troopers.<sup>1</sup> We have considered the exception you claim and have reviewed the documents at issue.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *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 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

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<sup>1</sup>Since you do not object to the release of the remaining requested documents, we assume that you have made these documents available to the requestor.

You have submitted pleadings from pending lawsuits in which Troopers Earl Conaway and Larry Hancock are named as defendants. We have reviewed these pleadings and agree that the documents at issue are related to the pending lawsuits. Under these circumstances, we conclude that the department may withhold the documents at issue from disclosure pursuant to section 552.103(a).

In reaching this conclusion, however, we assume that the opposing parties in the litigation have not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103 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,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 121435

Enclosures: Submitted documents

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