



February 9, 1999

Mr. Gregory T. Simpson
Director, Administrative/
Employment Section
Texas General Land Office
1700 North Congress Avenue
Austin, Texas 79701-1495

OR99-0390

Dear Mr. Simpson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 121901.

The Texas General Land Office (the "Land Office") received a request for the following three categories of information:

1. A listing of locations of various Land Office authorized erosion projects;
2. A copy of a bi-annual report to the legislature regarding the status of coastal problems, issues and programs; and,
3. A listing of homes which have been determined by the Land Office to be located on the public beach.

In response to the request, you submit to this office for review the information at issue. Although you have released certain records responsive to categories one and two, you claim that "any documents which would be responsive to request three should be withheld" from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

To show that section 552.103(a) is applicable, the Land Office must demonstrate 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, 481

¹Although you raised sections 552.101, 552.107, and 552.111, you did not explain how these exceptions apply to the information at issue, thus we are unable to consider them. See Gov't Code § 552.301(b); Open Records Decision No. 363 (1983). Chapter 552 of the Government Code places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974).

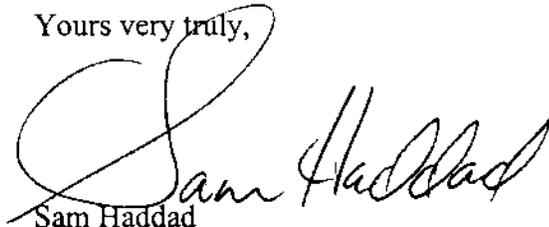
(Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the Land Office must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

You represent that the Land Office is authorized to investigate instances of violations of the Open Beaches Act ("OBA"), which are then referred to the Office of the Attorney General. *See* Tex. Nat. Res. Code §§ 61.001-61.025. You also state that litigation is pending concerning one structure, which is in violation of the OBA, while "[a]nother structure . . . has been formally referred to the OAG for enforcement of the OBA, though no litigation has yet been initiated." *Id.* § 61.018. Furthermore, the "Land Office is currently processing information regarding the rest of the structures. . . , and they will be referred to the OAG for enforcement." In this instance, the Land Office has supplied this office with information which shows that there is ongoing investigation, and that enforcement action will be taken as authorized by statute. We conclude that litigation is pending and reasonably anticipated. We additionally find that the documents submitted by the Land Office are related to the litigation for the purposes of section 552.103(a). The documents may, therefore, be withheld pursuant to section 552.103.

Generally, 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 has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. We also 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).

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,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive, flowing style with a large initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.:ID# 121901

Enclosures: Submitted documents

cc: Mr. Luke Carrabba
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(w/o enclosures)