



February 17, 1999

Ms. Jennifer D. Soldano
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR99-0480

Dear Ms. Soldano:

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# 122180.

The Texas Department of Transportation (the "department") received a request for Sandra York's employment records. You contend that the responsive documents are excepted from disclosure pursuant to section 552.103 of the Government Code. 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).

You have demonstrated that the department is involved in pending litigation against Sandra York. See Open Records Letter Nos. 98-2888 (1998), 98-2354 (1998). We agree that the submitted documents are related to the pending litigation. However, the submitted documents include Ms. York's time sheets and personnel evaluation, documents to which she has previously had access. This office has held that if the opposing party in litigation has seen or had access to information, there is no justification for withholding that information from disclosure pursuant to section 552.103. Open Records Decision Nos. 349 (1982), 320 (1982). Therefore, the department may not withhold documents to which Sandra York has previously had access. The department may withhold the remaining documents from

disclosure pursuant to section 552.103. We 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.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 122180

Enclosures: Submitted documents

cc: Ms. Monica Martinez
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(w/o enclosures)