



October 1, 1999

Ms. Mary Barrow Nichols
General Counsel
Texas Workers' Compensation Insurance Fund
221 West 6th Street, Suite 300
Austin, Texas 78701-3403

OR99-2786

Dear Ms. Nichols:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128162.

The Texas Workers' Compensation Insurance Fund (the "Fund") received a request for the transcript of a recorded statement taken during the Fund's investigation of a claim for workers' compensation insurance benefits. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the information at issue.

Section 552.103(a) of the Government Code 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). Having carefully considered your arguments, we conclude that the Fund reasonably anticipates litigation relating to its investigation of the claim for benefits. The requested information relates to the reasonably anticipated litigation, and is, therefore, excepted from disclosure under section 552.103.

In reaching this conclusion, however, we assume that the opposing party in the anticipated litigation has not previously had access to the information 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). Because we are able to resolve this matter under section 552.103, we do not address your additional arguments against disclosure.

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,

A handwritten signature in cursive script that reads "Karen Hattaway".

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 128162

Encl. Submitted documents

cc: Mr. Lourdes Viada
Sweezy Construction, Inc.
1901 Sweezy Lane
San Benito, Texas 78586
(w/o enclosures)