



November 17, 1999

Ms. Joanne Wright
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Building
125 East 11th Street
Austin, Texas 78701-2483

OR99-3284

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 129482.

The Texas Department of Transportation ("TxDOT") received a request for "any and all information related to the construction project titled, U.S. Highway 80, Dallas County, .4 miles west of Belt Line Road to .5 miles east of Belt Line Road" and other related information. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a) of the Government Code as amended by the Seventy-sixth Legislature reads in pertinent part as follows:

(a) Information is excepted from the requirements of Section 552.021 if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

Act of May 25, 1999, 76th Leg., R.S., ch. 1319, §6, 1999 Tex. Sess. Law Serv. 4502 (Vernon) (to be codified as an amendment to Gov't Code § 552.103).

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). You have submitted a copy of a petition in which TxDot is a named defendant. In this instance, you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a).¹ Most of the requested records therefore may be withheld from public disclosure.²

You also submitted a newspaper article which relates to the subject matter of the litigation. This information is considered to be within the public domain and, as such, cannot be withheld under section 552.103.

We note that some of the information submitted is subject to disclosure notwithstanding your section 552.103 assertion. We specifically refer you to section 552.022 which reads in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

...

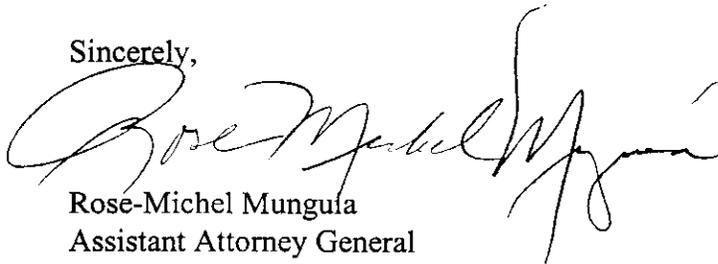
(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completions of the estimate.

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²We note that if the opposing party in the litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). However, if the records contain information that is confidential by law, you must not release such information even at the conclusion of the litigation. Gov't Code §§ 552.101, .352.

We have marked the information which must be released in accordance with section 552.022. We are resolving this matter with this 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 may 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 black ink, appearing to read "Rose-Michel Munguia". The signature is fluid and cursive, with a large initial "R" and "M".

Rose-Michel Munguia
Assistant Attorney General
Open Records Division

RMM/nc

Ref: ID# 129482

Encl: Submitted documents

cc: Mr. Peter Malouf
Waggoner, Malouf, & Aldous, L.L.P.
2651 North Harwood, Suite 210
Dallas, Texas 75201