



February 28, 2000

Ms. Janice Marie Wilson
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2000-0727

Dear Ms. Wilson:

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# 132629.

The Texas Department of Transportation (the "department") received a written request for, among other things, records pertaining to complaints filed against, investigations of, and disciplinary actions taken against a named automobile dealer. You contend that the information at issue is excepted from required public disclosure pursuant to section 552.103 of the Government Code.¹

The test for establishing that section 552.103(a) applies to requested information is a two-prong showing that (1) litigation is pending or reasonably anticipated at the time the request for the information is received, and (2) the information at issue is related to that litigation. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997), *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). You explain that upon finding a violation of chapter 503 of the Transportation Code, the department's Motor Vehicle Division

is empowered to file an administrative case alleging violations of law seeking the assessment of civil penalties or the revocation of a motor vehicle dealer's license.

¹You state that other requested information has been released to the requestor.

An investigation is opened by the Motor Vehicle Division when the Division receives an outside complaint that a violation of law has occurred. At that point one or more investigators are assigned to conduct an investigation and to recommend possible further action. The nature of this investigation is to amass evidence and make a preliminary determination regarding law violations, determinations that are designed to facilitate the filing of an administrative case. Litigation is not inevitable, but it is certainly anticipated and planned for throughout the conduct of an open investigation.

After reviewing your arguments and the information at issue, we conclude that the department reasonably anticipated litigation regarding this matter on the day it received the current records request and that the information at issue relates to that litigation for purposes of section 552.103. Accordingly, the department may withhold the information at issue at this time pursuant to section 552.103 of the Government Code.

In reaching this conclusion, however, we assume that the opposing party to the litigation has 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). If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103. 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).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

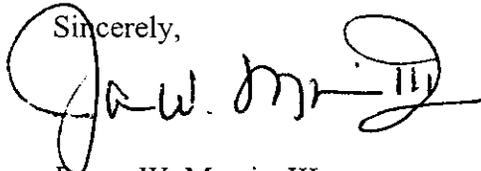
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/RWP/ch

Ref.: ID# 132629

cc: Mr. Michael D. Myers
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(w/o enclosures)