



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 28, 1995

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

OR95-239

Dear Ms. Mann:

You have asked 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# 26396.

The Texas Department of Transportation (the "department") received a request for the dates two traffic signs were installed. The department contends that records responsive to the request are excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *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 (1990) at 4.

You state that litigation is reasonably anticipated:

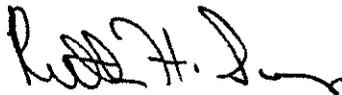
An accident occurred on March 31, 1993 at the location stated in the request for information. The information requested relates specifically to that accident. Both parties involved in the accident are being represented by an attorney [The attorney] sent a letter . . . in which he advised us that he is representing the parties with respect to their claim.

We note that a two year statute of limitations is generally applicable to claims made for personal injuries. *See* Civ. Prac. & Rem. Code §§ 16.001 (legal disability tolls running of limitations period), .003 (two year limitations period for personal injuries); *Strickland v. City of Denver City*, 559 S.W.2d 116 (Tex. Civ. App.--Eastland 1977, no writ) (two year statute of limitations for personal injury under Texas Tort Claims Act); *Brown v. Owns*, 674 S.W.2d 748 (Tex. 1984) (discusses statute of limitations under Texas Tort Claims Act). You have provided no information showing that a lawsuit has been filed within the applicable limitations period.

In determining whether litigation is reasonably anticipated, this office must make a case-by-case determination based on the information provided to this office. Open Records Decision No. 452 (1986) at 4. A governmental body must provide concrete evidence that litigation is realistically contemplated. Open Records Decision No. 518 (1989) at 5. Since you have provided no evidence to show that a lawsuit was brought within the applicable period of limitations, litigation is not reasonably anticipated. Since section 552.103(a) is not applicable in this situation, the information requested must be disclosed.

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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/KHG/rho

Ref: ID# 26396

Enclosures: Submitted documents

cc: Ms. Darlene M. Migura
The Information Bank of Texas, Inc.
111 W. 14th Street
Houston, Texas 77008
(w/o enclosures)