



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 23, 1996

Ms. Barbara E. Roberts  
City Attorney  
City of Galveston  
P.O. Box 779  
Galveston, Texas 77553-0779

OR96-0230

Dear Ms. Roberts:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 30906.

The City of Galveston (the "city") received a request for information relating to a traffic accident which occurred on August 16, 1994 in which a particular individual was injured. Specifically, the requestor seeks copies of all photographs taken of the accident scene and any other applicable information relating to the accident. You assert that all of the requested information is excepted from disclosure pursuant to section 552.103(a) of the Government Code.

To secure the protection 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. In Open Records Decision No. 638 (1996), this office stated that a governmental body has met its burden of showing that litigation is reasonably anticipated when it received a notice of claim letter *and* the governmental body represents that the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act, Civ. Prac. & Rem. Code ch. 101, or an applicable municipal ordinance or statute.

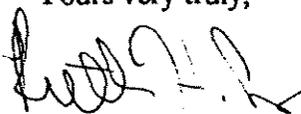
You have submitted to this office a copy of a "notice of claim" letter from an attorney representing an individual who was injured in an automobile accident. The attorney alleges that "the claim is based upon the negligence of the driver of the fire truck in failing to yield the right of way" to his client. Further, he alleges that the claim is "also based on the negligent failure of the city to replace a stop sign which, according to the

police report, should have been facing the Galveston fire truck at the intersection, but which was absent." The attorney's letter indicates that he is making a claim against the city for damages sustained by his client. We understand you to represent to this office that the claim letter is in compliance with the applicable municipal statute or ordinance. We also have reviewed the records, and our review shows that they are related to the anticipated litigation. Thus, the city has met its burden for showing that litigation is reasonably anticipated and the information at issue may be withheld pursuant to section 552.103(a).

We note that the applicability of section 552.103(a) ends if the other parties to the anticipated litigation obtain the information or when the litigation concludes. Attorney General Opinion MW-575 (1982) at 2; Open Records Decisions Nos. 350 (1982) at 3; 349 (1982) at 2. We also note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, Open Records Decision No. 542 (1990) at 4, the city could choose to release the information at this time. Gov't Code § 552.007.

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 fact 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.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/SAB/ch

Ref.: ID# 30906

Enclosures: Open Records Decision No. 638 (1996))  
Submitted documents

Mr. Frank Fleming, Jr.  
Fleming Investigations  
2925 Palmer, Suite B  
Texas City, Texas 77590  
(w/enclosure ORD No. 638 (1996))