



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 22, 1996

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

OR96-0391

Dear Ms Soldano:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38067.

The Texas Department of Transportation (the "department") received a request for information concerning a motorcycle accident which allegedly occurred on F.M. 94, approximately 34 miles northeast of Matador, Texas, due to a defect in the roadbed. Specifically, the requestor seeks information concerning "any complaints about the road, any inspections of the road, any requests and orders for repairs and/or repaving of the road, and all work orders for the repair and/or repaving of the road." You contend that the department has a reasonable expectation of being sued and, therefore, you seek to withhold the information 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. Under Open Records Decision No. 638 (1996), a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney and (2) the governmental body states that the letter complies with the notice of claim provisions of the TTCA or applicable municipal statute or ordinance.

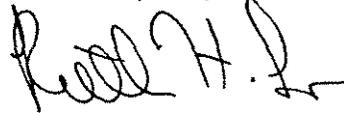
You have submitted to this office a letter from an attorney representing the injured individual. The attorney's letter indicates that he is making a claim under the TTCA

against the city for his client's injuries. Because your request for a decision from this office was made prior to the issuance of Open Records Decision No. 638 (1996), this office will assume that you are representing that the notice letter you received satisfies the requirements of the TTCA. See Open Records Decision No. 638 (1996). We have reviewed the records, and our review shows that they relate to the anticipated litigation. Thus, the city has met its burden of showing that litigation is reasonably anticipated and the information at issue may be withheld pursuant to section 552.103(a).¹

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 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.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/SAB/ch

Ref.: ID# 38067

Enclosures: Open Records Decision No 638 (1996)

cc: Mr. Steve A. Kamel
Anderson & Kamel
Two Memorial City Plaza
820 Gessner, Suite 1550
Houston, Texas 77024
(w/enclosures-Open Records Decision No. 638 (1996))

¹We also note that if in the future you assert that section 552.103(a) is applicable on the basis of the city's receipt of a notice of claim letter, you should affirmatively represent to this office that the letter complies with the requirements of the TTCA or the applicable municipal statute or ordinance.