



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 29, 1996

Ms. Marva M. Gay  
Assistant Harris County Attorney  
1001 Preston, Suite 634  
Houston, Texas 77002-1891

OR96-0622

Dear Ms. Gay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39610.

Harris County (the "county") received a request for information seeking "any and all documentation in [the county's] possession and/or control that relates in any manner to the arrest and the injury of [Nellie Frazier]." You claim that the requested information is exempted from required public disclosure pursuant to sections 552.101 and 552.103 of the Government Code. You have submitted for our review the documents in question.

Section 552.103(a) exempts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, 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; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing 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. The city must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you state that the county has received a notice of claim letter from an attorney and a claim report filed for injuries sustained by Ms. Frazier. This information, you state, shows that the county reasonably anticipates litigation. This office has recently issued Open Records Decision No. 638 (1996) which addresses notice of claim letters and the applicability of section 552.103. Under Open Records Decision 638, 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 a letter to this office for review which appears to be a notice of claim under the Texas Tort Claims Act ("TTCA") or applicable municipal statute or ordinance. We will assume that you are representing that the notice letter you received satisfies the requirements of the TTCA or an applicable municipal statute or ordinance. If this assumption is correct, you may withhold the requested documents that relate to this anticipated litigation.<sup>1</sup>

If, however, this assumption is incorrect and you are not representing that the notice letter complies with the TTCA or applicable municipal statute or ordinance, then you have not met your burden of showing that litigation is reasonably anticipated for purposes of section 552.103(a). See Open Records Decision No. 638 (1996). If you do not agree with our assumption that the notice letter complies with the TTCA or applicable municipal statute or ordinance, you should seek a reconsideration from this office and at that time re-assert your other previously raised arguments against disclosure.<sup>2</sup>

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

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<sup>1</sup>We caution, however, that generally once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a). However, confidential information may not be disclosed even after the litigation has concluded. See Gov't Code § 552.352 (the distribution of confidential information is a criminal offense).

We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

<sup>2</sup>Because we resolve this matter pursuant to section 552.103 of the Government Code, we need not address your stated exception under 552.101. If, however, another request is made for the information, you must raise all of your stated exceptions again at that time. *But see* Open Records Decision No. 575 (1990) (section 552.101 does not embody discovery privileges).

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.

Sincerely,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref.: ID# 39610

Enclosures: Submitted documents

cc: Mr. John L. Green  
Attorney and Counselor at Law  
4888 Loop Central Drive, Suite 445  
Houston, Texas 77081  
(w/o enclosures)