



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 30, 1996

Mr. Richard D. Monroe
Deputy General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 East 11th Street
Austin, Texas 78701-2483

OR96-0637

Dear Mr. Monroe:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 31272.

The Texas Department of Transportation (the "department") received two requests for information concerning an automobile accident that occurred on March 5, 1993, in which an individual was killed. The requestor asked for "the name of [the] entity that maintained the traffic signals at the intersection of Research and Fairfield Drive on 3-5-93" and copies of complaints concerning the intersection. You assert that the department has a "reasonable expectation of being sued as to the alleged incident." You contend that the requested information is excepted from required public 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. We note initially that you did not submit responsive documents to this office to review. The requestor sought complaints about the traffic signals and the name of the entity who maintained the signal lights, but you submitted an accident report for the March 5, 1993 accident. Thus, the records you submitted were not responsive to the request.

Also, you did not establish the applicability of section 552.103(a). 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. We conclude that you have not established that litigation is reasonably anticipated in this matter. Although you have provided to this office a notice of claim filed with the department, we note that the incident giving rise to the notice occurred more than two years ago. You have provided no information to this office that would indicate that a lawsuit has been filed in this matter. In making the determination that litigation cannot be reasonably anticipated, we assume that the general two year statute of limitation applies and has not been tolled. *See* Civ. Prac. & Rem. Code §§ 16.001 (legal disability tolls running of limitations period), .003 (two year limitations period for personal injuries).

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 may 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# 31272

Enclosures: Submitted documents

cc: Terry Hall
Bates Investigations
4107 Spicewood Springs Road
Suite 210
Austin, Texas 78759-8646