



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 1, 1996

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

OR96-0649

Dear Ms Wright:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 36041.

The Texas Department of Transportation (the "department") received a request for information concerning an automobile collision that occurred in the 2100 block of U.S. Highway 59. Specifically, the request seeks the "plan and profile diagrams for the 2100 - 2800 blocks of U. S. 59, Eastex Freeway, as it was on June 1, 1995." Additionally, the requestor seeks the "maintenance records for the lane striping for the period of June, 1995, and going back five years, for this section of highway." 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.

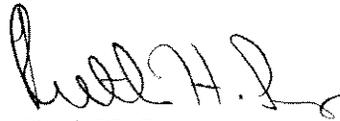
You have submitted to this office a letter from an attorney representing the injured individual. The attorney's letter indicates that he is making a claim under the TTCA against the department for his client's injuries. Because your request for a decision from this office was made prior to the issuance 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 department 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 party to the anticipated litigation obtains the information or when the litigation concludes. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision 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 department 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# 36041

Enclosures: Open Records Decision No 638 (1996)

cc: Mr. David E. Chapin
DeSimone Law Office
3120 S.W. Freeway, Suite 555
Houston, Texas 77098
(w/enclosure-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.