



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 7, 1996

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR96-0672

Dear Ms. Nguyen:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 31030.

The City of Houston received a request for a copy of an accident report, prepared by Houston Intercontinental Airport personnel on October 17, 1994, concerning a particular individual. The requestor is an attorney representing an individual who was injured when she slipped and fell "while walking through the hallway that leads from the baggage claim area to the exit of the terminal." The attorney alleges that the cause of the accident was due to a "wet and oily substance located on the floor." You assert that the requested document is excepted from required public disclosure pursuant to section 552.103(a) of the Government Code.

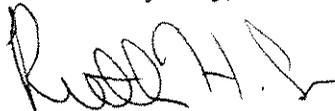
To secure the protection of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. 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 Texas Tort Claims Act ("TTCA"). You have submitted a letter to this office for review which appears to be a claim letter. 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 or applicable statute or ordinance. We 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

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 § 552.007.¹

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# 31030

Enclosures: Open Records Decision No. 638 (1996)

cc. Mr. Arturo Diaz-Angueira
Attorney at Law
404 Munoz Rivera Avenue
Hato Rey, Puerto Rico 00918-3345
(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 a notice of claim letter, you should affirmatively represent to this office that the letter complies with the requirements of the TTCA.