



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 7, 1996

Ms. Y. Qiyamah Taylor
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR96-0903

Dear Ms. Taylor:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35046.

The City of Houston (the "city") received a request for a complete copy of the traffic investigation accident report involving an accident between a city fire department vehicle and the requestor including a copy of witness statements. You have submitted a copy of the claim letter submitted by the requestor, a copy of the requestor's letter to the city and a copy of the accident report which you contend is excepted from required public disclosure under section 552.103 of the Government Code. Additionally, you have submitted an affidavit from a senior assistant city attorney in the claims/subrogation division which attests that the city has conducted an investigation of the claim which establishes, to the satisfaction of the city, that there was no liability on the part of the city in the circumstances giving rise to the claim.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. 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 section 552.103(a).¹

We observe that the requestor's letter states his law firm has been retained and assigned an interest to pursue legal action resulting from the particular accident and the assistant city attorney's position that the city has not incurred any liability as a result of the accident. This information taken together indicates a real dispute between the parties and constitutes information sufficient for the city and its attorney to conclude that litigation is "reasonably anticipated." Consequently, we conclude that given this particular set of circumstances litigation is reasonably anticipated. Open Records Decision No. 346 (1982). Therefore, the city may withhold the requested documents under section 552.103. We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). We 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).

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,



Janet I. Monteros
Assistant Attorney General
Open Records Division

¹We observe that under the recent 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") or applicable municipal statute or ordinance. 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 in accordance with Open Records Decision No. 638 (1996).

JIM/rho

Ref.: ID# 35046

Enclosures: Submitted documents

cc Mr. Alexander J. Hay III, P.C.
10333 Northwest Freeway
Northwest Plaza, Suite 406
Houston, Texas 77092
(w/o enclosures)