



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 28, 1996

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

OR96-1044

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 32084.

The City of Houston (the "city") received a request for the accident report concerning an accident which occurred at the Houston Intercontinental Airport on November 21, 1994. You assert that the requested information is excepted from public disclosure pursuant to section 552.103(a) of the Government Code.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or 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.

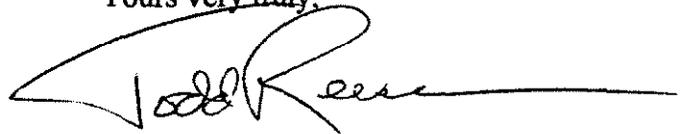
The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is showing that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to 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.

You have enclosed an affidavit signed by a Senior Assistant City Attorney in which the attorney asserts that "World Access Canada, Inc. . . . is seeking reimbursement from the City under a subrogation clause." Based on this assertion, we conclude that litigation is reasonably anticipated. Having reviewed the information at issue, we conclude that you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). Thus, the city may withhold the requested information.

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the record at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing party in the anticipated litigation has seen or had access to any of the information in this record, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). 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).

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,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal line extending to the right.

Todd Reese  
Assistant Attorney General  
Open Records Division

RTR/SAB/rho

Ref.: ID# 32084

Enclosures: Open Records Decision No 638 (1996)  
Submitted documents

cc: Ms. Karen Schell  
Manager  
Recovery Unit  
World Access Canada, Inc.  
P.O. Box 574  
Waterloo, Ontario N2J4G1  
(w/o enclosures)