



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 10, 1996

Mr. John C. West, Jr.
Chief Legal Services
Texas Department of Public Safety
Box 4087
Austin, Texas 78773-0001

OR96-1118

Dear Mr. West:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 34470.

The Texas Department of Public Safety (the "department") received a request for information concerning a motor vehicle accident that occurred on March 5, 1995 and involved a DPS officer and the requestor's client. Specifically, the requestor seeks "access to all records, including materials in the field officer's possession, such as field notes, witnesses names and statements, and diagrams." You contend that all of the requested information is excepted from disclosure pursuant to sections 552.101, 552.103(a) and 552.107 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") Civ. Prac. & Rem. Code ch. 101.

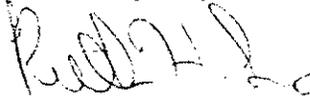
You have submitted to this office a letter from an attorney representing the injured party who filed a claim against the department. Because your request for a decision from this office was made prior to the issuance of Open Records Decision No. 638 (1996), this office will assume that you are representing 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 anticipated litigation.

Thus, the department has met its burden of showing that litigation is anticipated and the information at issue may withheld pursuant to section 552.103(a).¹

We note that the applicability of section 552.103(a) generally ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. If the opposing party in the anticipated litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the department's discretion to release this information to the requestor. 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 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# 34470

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

cc: Ms. Pamela J. Franklin
Law Offices of Edward Conley
Westcott Central
550 Westcott Street. Suite 580
Houston, Texas 77007
(w/ enclosures--Open Records Decision No. 638 (1996))

¹We note that if our assumption is incorrect and you are not representing that the notice letter complies with the TTCA, then you have not met your burden of showing that litigation is reasonably anticipated for purposes of section 552.103(a). See Open Records Decision No. 638 (1996). Also, in the future you should affirmatively represent to this office that the letter complies with the requirements of the TTCA.

Mr. Nathan Henderson
Investigator
Tort Litigation Division
Office of the Attorney General
(w/ enclosures--Open Records Decision No. 638 (1996))