



Office of the Attorney General

State of Texas

July 15, 1996

DAN MORALES

ATTORNEY GENERAL

Mr. Richard D. Monroe
Deputy General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 East 11th Street
Austin, Texas 78701-2483

OR96-1143

Dear Mr. Monroe:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 33485.

The Texas Department of Transportation (the "department") received a request for eleven (11) categories of information concerning an "alleged automobile collision on August 14, 1994 . . . in the 9800 block of Highway 87 in Port Arthur, Jefferson County, Texas." 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.¹

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 notice of claim letter from an attorney who represents the heirs of four (4) individuals who were killed in the automobile accident. The attorney's letter indicates that he is asserting a claim against the State of Texas in compliance with section 101.101 of the TTCA. 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

¹You also submitted accident reports to this office. We assume these were submitted for informational purposes only and are not at issue.

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. If this assumption is correct, you may withhold the requested information pursuant to section 552.103(a).

If, however, this assumption is incorrect and you are not representing that the notice letter complies with TTCA , then you have not met your burden of showing that litigation is anticipated for the purposes of section 552.103(a). *See* Open Records Decision No. 638 (1996). We note that if in the future you assert that section 552.103(a) is applicable on the basis of the department'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. We also 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.

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# 33485

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

cc: Ms. Liz Mobley
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(w/enclosure-Open Records Decision No. 638 (1996))

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