



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 1, 1996

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

OR96-1363

Dear Ms. Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100352.

The City of Houston (the "city") received two requests for information relating to a traffic accident at the intersection of Center Street and Yale Street. You claim this information is excepted from required public disclosure pursuant to section 552.103 of the Government Code.

When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation.¹ Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation is either pending or reasonably anticipated and that (2) the requested information relates to that litigation. *See 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.

¹Section 552.103(a) excepts from required public disclosure information:

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

Along with a representative sample of the responsive information,² you submitted to this office a copy of a filed original petition regarding this accident. In this instance, you have made the requisite showing that litigation is pending. Our review of the records at issue indicates that they are related to this pending litigation. Consequently, you may withhold the requested information under section 552.103(a) of the Government Code.

In reaching this conclusion, however, we assume that the opposing parties to the pending litigation have not previously had access to the records 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 parties in the pending litigation have 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 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,



Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 100352

Enclosures: Submitted documents

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office are truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

cc: Mr. David W. Showalter
Law Offices of David W. Showalter, P.C.
5959 West Loop South, Suite 424
Bellaire, Texas 77401-2484
(w/o enclosures)

Mr. Frank Huschle
Private Investigations
134 Live Oak
Alvin, Texas 77511
(w/o enclosures)