



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 7, 1996

Mr. Kevin McGraw  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR96-1401

Dear Mr. McGraw:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 33925.

The City of Waco (the "city") received two requests for information concerning an accident that occurred at the intersection of West Waco Drive and North 17th Street, on April 20, 1995.<sup>1</sup> The city contends that the information is excepted from disclosure pursuant to section 552.103(a) 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.

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<sup>1</sup>We assume that the Texas Peace Officer's Accident Report and the supplement that you submitted to this office is not at issue and has already been disclosed. We do not address the report and supplement in this letter.

You have submitted to this office a notice of claim letter from an attorney representing the injured party. 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, or applicable municipal statute or ordinance. If this assumption is correct you may withhold from disclosure the requested documents at issue.<sup>2</sup> In the future, if 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 reaching this conclusion, we assume that the opposing party to the litigation has not previously had access to the records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, for example, through discovery or otherwise, no section 552.103(a) interests exists with respect to that information. Open Records Decision No. 349 (1982) at 2. In addition, the applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We note that since the section 552.103(a) exception is discretionary, Open Records Decision No. 542 (1990) at 4, the city may 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,



Loretta R. Dehay  
Assistant Attorney General  
Open Records Division

LRD/SAB/rho

Ref.: ID# 33925

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<sup>2</sup>We have reviewed the records you submitted to this office as responsive to the request, and agree that they are related to the anticipated litigation.

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

cc: Mr. Charles Buenger  
Buenger & Associates  
P.O. Box 410  
Waco, Texas 76703  
(w/o submitted documents)

Ms. Audra L. White  
7301 Sanger Avenue, Apt. #225  
Waco, Texas 76712  
(w/o submitted documents)