



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 7, 1996

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

OR96-1402

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34895.

The City of Houston (the "city") received a request for all investigative reports concerning an incident on December 23, 1994, involving the handcuffing of two persons and the shooting of their dog. You explain that the city has provided the requestor the front page offense report information, however, you assert that the remainder of the requested information is excepted from disclosure under 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.

You have submitted to this office a notice of claim letter from an attorney representing the allegedly 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.¹ 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# 34895

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

cc: Mr. Ray J. McQuary
Law Offices of Ray J. McQuary
3838 N. Sam Houston Parkway East, Suite 170
Houston, Texas 77032
(w/o submitted documents)

¹We have reviewed the submitted documents, and we agree that the documents are related to anticipated litigation.