



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 15, 1996

Mr. Kevin McGraw
Assistant City Attorney
City of Waco
Legal Services
P.O. Box 2570
Waco, Texas 77251-1562

OR96-1464

Dear Mr. McGraw:

You have asked 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# 35660.

The City of Waco (the "city") received a request for the following information concerning a house fire. Specifically, the requestor seeks the following information:

a copy of the tape recorded 911 call, a copy of the 911 logs and any other call for emergency service report, the Fire Marshal's report, and any other internal Fire Department Reports concerning the incident detailed above.

You have submitted for our review the documents that are at issue. The city contends that the requested information is excepted from disclosure under section 552.103(a) of the Government Code.

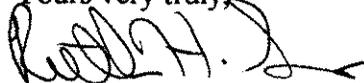
To show that section 552.103(a) is applicable, the department must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You assert that the city reasonably anticipates litigation and have provided this office with a notice of claim concerning the fire. From the information provided, it appears that litigation is reasonably anticipated. We have reviewed the documents, and the documents appear to be related to anticipated litigation. Thus, the information at issue may be withheld from disclosure pursuant to section 552.103(a).

The applicability of section 552.103(a) generally ends if the other party to the anticipated litigation obtains the information or when the litigation concludes. Attorney

General Opinion MW-575 (1982) at 2; Open Records Decision 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# 35660

Enclosures: Submitted documents

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