



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 19, 1996

Mr. Edward H. Perry  
Assistant City Attorney  
City of Dallas  
City Hall  
Dallas, Texas 75201

OR96-1485

Dear Mr. Perry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101103.

The City of Dallas (the "city") received an open records request for "all documents relating to" the requestor's claim against the city. You seek to withhold the requested information from required public disclosure pursuant to sections 552.103 and 552.111 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.<sup>1</sup> 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.

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<sup>1</sup>Section 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

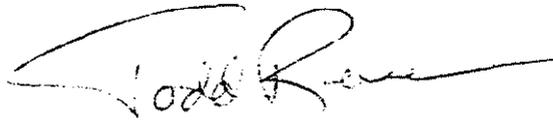
(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

You state that the requestor's Notice of Claim against the city is in compliance with the Texas Tort Claims Act. Consequently, you have established that litigation is reasonably anticipated. Open Records Decision No. 634 (1996). We conclude that you have made the requisite showing that the requested information relates to the reasonably anticipated litigation for purposes of section 552.103(a). Thus, you may withhold the requested information from the requestor at this time under section 552.103(a).

In reaching this conclusion, however, we assume that the opposing party to the anticipated 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, *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 party in the anticipated litigation has 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).<sup>2</sup>

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# 101103

Enclosures: Submitted documents

cc: Mr. Raul Rodriguez  
3034 Alderon Lane  
Garland, Texas 75044  
(w/o enclosures)

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<sup>2</sup>As we resolve this matter under section 552.103, we need not address your arguments against disclosure under section 552.111 at this time.