



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 21, 1996

Ms. Joanne Wright
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 East 11th Street
Austin, Texas 78701-2483

OR96-1519

Dear Ms. Wright:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 36513.

The Texas Department of Transportation (the "department") received a request for information concerning an incident involving the "location in front of the What-A-Burger, West Mount Houston and I-45; June 6, 1994." Specifically, the requestor seeks a copy of the department's "findings and denial of liability involving this location." You contend that the department has a reasonable expectation of being sued and, therefore, you seek to withhold the information pursuant to section 552.103(a) of the Government Code. You have submitted a copy of the documents at issue.

To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue relates 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.

In determining whether litigation is reasonably anticipated, this office must make a case-by-case determination based on the information provided to this office. Open Records Decision No. 452 (1986) at 4. A governmental body must provide concrete evidence that litigation is realistically contemplated. Open Records Decision No. 518 (1989) at 5. We conclude that you have not established that litigation is reasonably

anticipated in this matter. Although you have provided to this office a notice of claim filed with the department, we note that the incident giving rise to the notice occurred more than two years ago. You have provided no information to this office that would indicate that a lawsuit has been filed in this matter. *See* Open Records Decision No. 638 (1996) at 3 (governmental body must provide this office with new developments concerning anticipated litigation). In making the determination that litigation cannot be reasonably anticipated, we assume that the general two year statute of limitations applies and has not been tolled. *See* Civ. Prac. & Rem. Code §§ 16.001 (legal disability tolls running of limitations period), .003 (two year limitations period for personal injuries). If this is an incorrect assumption, you should contact this office.

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/rho

Ref.: ID# 36513

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

cc: Ms. Liz Mobley
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