



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 21, 1996

Mr. W. Daniel Vaughn  
McLeod, Alexander, Powel & Apffel  
802 Rosenberg  
P.O. Box 629  
Galveston, Texas 77553

OR96-1895

Dear Mr. Vaughn:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101324.

The Board of Trustees of the Galveston Wharves received a request for the "complete file" concerning a fatal accident. You assert that the information at issue is excepted from disclosure under the "litigation exception," because litigation is reasonably anticipated. We assume that you are asserting that the information at issue is excepted from disclosure under section 552.103(a) of the Government Code, which excepts from disclosure information that relates to pending or reasonably anticipated 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 Open Records Decision No. 452 (1986) at 4, this office stated:

Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it -- unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. [Citations omitted.]

You have demonstrated that, in this situation, litigation is reasonably anticipated. Also, our review of the documents submitted to this office shows that they are related to the pending litigation.

We note that the records submitted to this office include an autopsy report, which is expressly made public under section 11, article 49.25 of the Code of Criminal Procedure and may not be withheld from disclosure. Also, once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). You may withhold the other records at issue that the opposing party to the anticipated litigation has not seen or had access to.<sup>1</sup> Please note that applicability of section 552.103(a) also ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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/ch

Ref: ID#101324

Enclosures: Submitted documents

cc: Mr. Jeffrey D. Roberts  
Roberts, Markel & Folger  
24 Greenway Plaza, Suite 2000  
Houston, Texas 77046  
(w/o enclosures)

---

<sup>1</sup>Since the information at issue may be withheld from disclosure pursuant to section 552.103(a), we need not address your question as to whether some of the documents "are subject to the attorney client privilege."