



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 3, 1996

Ms. Jennifer Soldano
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 E. 11th Street
Austin, Texas 78701

OR96-2280

Dear Ms. Soldano:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102371.

The Texas Department of Transportation (the "department") received a request for information concerning "the intersection at I 35 South frontage road and South 183." Specifically, the requestor seeks a list of complaints about the intersection and a list of repairs, modifications, light sequencing changes, and changes to the traffic lights at that intersection. You assert that this information is excepted from disclosure pursuant to section 552.103(a) of the Government Code.

To secure the protection of section 552.103(a) a governmental entity must show that litigation is pending or reasonably anticipated and that 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. and Rem. Code ch. 101.

You have submitted to this office copies of two notice of claim letters from attorneys who represent the injured parties. You state that both claim letters meet the notice requirements of the TTCA. We have reviewed the records, and our review shows that they are related to the anticipated litigation. Thus, the department has met its burden

of showing that litigation is reasonably anticipated and the information at issue may be withheld pursuant to section 552.103(a).

We note that the applicability of section 552.103(a) ends if the other parties to the anticipated litigation obtain 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 department could choose to release any information that is not otherwise confidential. 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 fact 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# 102371

Enclosures: Submitted documents

cc: Ms. Carrie Wheeler
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(w/o enclosures)