



Office of the Attorney General

State of Texas

January 17, 1997

DAN MORALES
ATTORNEY GENERAL

Ms. Jennifer D. Soldano
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR97-0094

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#103064.

The Texas Department of Transportation (the "department") received a request for its "completed investigation" of a particular traffic accident. You have submitted the requested information to this office for review and have claimed that it is excepted from disclosure pursuant to section 552.103 of the Government Code.

Section 552.103(a) excepts from 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.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990).

In Open Records Decision No. 638 (1996), this office stated that a governmental body may demonstrate that it reasonably anticipates litigation if it receives a notice of claim letter and represents to this office that the letter is in compliance with the requirements of the Texas Tort Claims Act, Civ. Prac. & Rem. Code, ch. 101, or an applicable municipal ordinance or statute.

You state that department received a "notice of claim that meets the requirements of the Tort Claims Act." We therefore conclude that the department reasonably anticipates litigation relating to the traffic accident about which the requestor is seeking information.. Because the requested information relates to the anticipated litigation, the city may withhold the information from disclosure pursuant to section 552.103 of the Government Code.¹

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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 103064

Enclosures: Submitted documents

cc: Ms. Donna J. Bowen
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Austin, Texas 78759
(w/o enclosures)

¹We note that if the opposing party in the anticipated litigation has seen or had access to the requested information, there would be no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).