



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 10, 1997

Mr. Ron Pigott
Assistant General Counsel
Texas Department of Public Safety
5805 N. Lamar Blvd.
Box 4087
Austin, Texas 78773-0001

OR97-0766

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 105000.

The Texas Department of Public Safety (the "department") received a request for a copy of a videotape from a trooper's on-board video camera involving a pursuit that ended with the death of Mr. Alberto Gutierrez, a family member of the requestor's client. You assert that the requested information is excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the governing body is or may be a party. The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) 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. The department must meet both prongs of this test for information to be excepted under section 552.103(a).

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 "Mr. Abrego's letter meets these notice requirements. Specifically, it (1) states that

Mr. Gutierrez is deceased; (2) provides the time and place of the incident that lead to Mr. Gutierrez' death in the heading; and (3) reasonably describes the incident by stating that Trooper Terronez was driving a patrol vehicle that struck Mr. Gutierrez." We therefore conclude that the department reasonably anticipates litigation relating to the incident which resulted in the death of Mr. Gutierrez. Because the requested information relates to the anticipated litigation, the department may withhold the information from disclosure pursuant to section 552.103(a) 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 questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 105000

Enclosures: Submitted tapes

cc: Mr. Everardo Abrego
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Pharr, Texas 78577
(w/o enclosures)

¹We note that 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). In addition, when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982).