



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 24, 1997

Mr. John T. Patterson
Assistant City Attorney
City of Waco
Legal Services
P.O. Box 2570
Waco, Texas 76702-2570

OR97-2150

Dear Mr. Patterson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 109702.

The City of Waco (the "city") received requests for all information pertaining to an accident at the Bledsoe-Miller Park. Although you will release some of the information, you claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted sample of documents.¹

To show that section 552.103 is applicable, the city must demonstrate 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. Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the city must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 (1989) at 5. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. 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) or applicable municipal statute or ordinance. Open Records Decision No. 638 (1996).

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You have submitted notice of claim letters which you state comply with the notice requirements of the TTCA and the city's charter. We conclude that litigation is reasonably anticipated, and that the documents submitted by the city are related to the reasonably anticipated litigation for purposes of section 552.103. However, basic information in a police offense report generally may not be withheld under section 552.103. Open Records Decision No. 597 (1991). Thus, the type of information that is considered to be front page offense report information must be released, even if this information is not actually located on the front page of the offense report. See Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976)). You inform us that you have released most of the front page offense report information to the requestors. However, you have redacted information which identifies the accident victims. You contend that the victims' identities are excepted from disclosure by section 773.091 of the Health and Safety Code because the information was obtained by police officers from hospital personnel.

Section 773.091 makes the following information confidential:

(a) a communication between certified emergency medical service personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient and

(b) records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider.

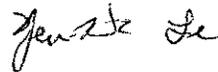
Section 773.091 does not apply to information police officers obtained from hospital personnel. Thus, you must release the redacted information concerning the victims' identities as this is the type of front page offense report information deemed public by *Houston Chronicle*. All other information submitted by the city may be withheld pursuant to section 552.103.

We note, however, that generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103, and it must be disclosed. Moreover, the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

As we resolve this matter under section 552.103, we need not address the other exceptions you have raised. We caution, however, that some of the information may be confidential by law or may implicate the proprietary interest of a third party. Therefore, if the city receives a request in the future, at a time when litigation is no longer reasonably anticipated or pending, the city should seek a ruling from this office on the other exceptions raised before releasing any of the requested information. *See* Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

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Ref: ID# 109702

Enclosures: Submitted documents

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