



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 17, 1997

Ms. Tracy B. Calabrese  
Assistant City Attorney  
City of Houston  
Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR97-2318

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 109961.

The City of Houston (the "city") received a request for "a copy of any statements taken from our client and photographs, if any" concerning a particular automobile accident. You assert that the requested information is excepted from required public disclosure based on section 552.103 of the Government Code

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is 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. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

You assert that the requested information relates to reasonably anticipated litigation. To support this assertion, you observe that the requestor states that she "has been retained by the above individual to represent her in a claim for bodily injuries as a result of an accident." You also state that the accident occurred when the requestor's client was struck by a vehicle driven by a city police officer.

We conclude that the city has not established that litigation is reasonably anticipated under these circumstances. See Open Records Decision No. 638 (1996). Accordingly, the city may not withhold the requested information from the requestor based on section 552.103.

We are resolving this matter with this 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 may 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,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/rho

Ref.: ID# 109961

Enclosures: Submitted documents

cc: Ms. Cassandra A. Evans  
Attorney at Law  
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Houston, Texas 77230-0976  
(w/o enclosures)