



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 20, 1997

Ms. Jennifer D. Soldano  
Associate General Counsel  
Texas Department of Transportation  
Dewitt C. Greer State Highway Bldg.  
125 E. 11th Street  
Austin, Texas 78701-2483

OR97-2542

Dear Ms. Soldano:

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# 111200.

The Texas Department of Transportation (the "department") received a request for information concerning the overlaying of roadways or highways, including a specific project in Kaufman County. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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.

You claim that litigation is reasonably anticipated because a claim for damages has been submitted to the department. 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) stating that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA")

or applicable municipal statute or ordinance. You have submitted to this office a letter from an attorney representing an allegedly injured party. You represent that "the notice of claim meets the notice requirements of the Texas Tort Claims Act." The attorney's letter indicates that he is making a claim under the TTCA against the department for his client's injuries and losses. We find that you have shown that litigation is reasonably anticipated. Open Records Decision No. 638 (1996). We have also reviewed the records, and our review shows that they are related to the anticipated litigation. Thus, you may withhold the requested information pursuant to section 552.103(a).

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) 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(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

VDP/ulg

Ref.: ID# 111200

Enclosures: Submitted documents

cc: Mr. Neal P. Flagg  
Attorney at Law  
Premier Place Building  
5910 North Central Expressway, Suite 650  
Dallas, Texas 75206  
(w/o enclosures)