



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 6, 1998

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

OR98-0030

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# 111721.

The Texas Department of Transportation (the "department") received a request for information concerning the construction of FM 564, to include original surveys, final construction plans, and agreements between the state and county and the City of Mineola. You have submitted a representative sample of the requested documents to this office for review.<sup>1</sup> You contend that the 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

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<sup>1</sup>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.

(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 the 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 the department received a notice of claim sent by the attorney for the family of two people who died in an accident at the intersection of US69 and FM564, .5 miles north of Mineola, Texas. You assert that the notice of claim meets the notice requirements of the Tort Claims Act. We therefore conclude that the department reasonably anticipates litigation in this matter, and, upon review of the information, conclude it is related to the anticipated litigation. The department may withhold the information from disclosure pursuant to section 552.103 of the Government Code.<sup>2</sup>

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

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Ref.: ID# 111721

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<sup>2</sup>We 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).

Enclosures: Submitted documents

cc: Mr. Jarrod Reeves  
Rt. 2, Box 1786B  
Quinlon, Texas 75474  
(w/o enclosures)