



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 19, 1998

Mr. James M. Kuboviak
Brazos County Attorney
300 E. 26th Street, Suite 325
Bryan, Texas 77803

OR98-0756

Dear Mr. Kuboviak:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114213.

The Brazos County Risk Management Office received a request for "all records regarding Charles Franklin." You assert that section 552.103(a) excepts from disclosure the records that are responsive to this request. The records at issue and a notice from Mr. Franklin's attorney were submitted to this office for review.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to the 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. In Open Records Decision No. 638 (1996), this office concluded that a governmental body could meet the first prong of the section 552.103(a) test, a showing that litigation is reasonably anticipated, if the governmental body receives a claim letter and also represents to this office that the letter is in compliance with the notice requirements of the Texas Tort Claims Act.

You state that the submitted letter from Mr. Franklin's attorney complies with the notice requirements of the Texas Tort Claims Act. Thus, you have shown that litigation is reasonably anticipated. Open Records Decision No. 638 (1996). Our review of the records at issue shows that they are related to the subject matter of the anticipated litigation. Since you have demonstrated the applicability of section 552.103(a), we agree that the records at issue may be withheld from disclosure.

We note that in making this determination, we assume that the records have not been seen by the opposing party to the anticipated litigation. No section 552.103(a) interest generally exists with respect to information that all parties to litigation have seen or had access to. Open Records Decision Nos. 349 (1982), 320 (1982). Also, the applicability of

section 552.103(a) ends once the litigation concludes. 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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 114213

Enclosures: Submitted documents

cc: Mr. Jerry McDonald
Litigation Records Services
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(w/o enclosures)