



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 5, 1998

Mr. John Steiner  
Division Chief  
City of Austin  
P.O. Box 1546  
Austin, Texas 78767-1546

OR98-2614

Dear Mr. Steiner:

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# 119227.

The City of Austin (the "city") received a request for information relating to a specific traffic accident. The requestor is also seeking all information relating to her client.<sup>1</sup> You have submitted four incident reports and a CAD sheet for our review.<sup>2</sup> You state that two of the incident reports and the public information portions of the remaining two incident reports have been released. However, you claim that the remaining information is excepted

---

<sup>1</sup>We note that information responsive to a request of this nature would ordinarily be excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law right to privacy, because responding to such a request requires a governmental entity to compile the referenced individual's criminal history. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (where individual's criminal history information has been compiled by governmental entity, information takes on character that implicates individual's right to privacy). However, in this instance, we need not consider the privacy implications of the request because the requestor is seeking a compilation of her client's records. See Gov't Code § 552.023 (information cannot be withheld from individual or individual's authorized representative based on laws intended to protect individual's privacy interests).

<sup>2</sup>You explain that the 911 tape does not exist. The Open Records Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

from disclosure under sections 552.101, 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.103(a) excepts from disclosure information relating to litigation to which the state is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex.App.--Austin 1997, no pet.), *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 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

To establish that litigation is reasonably anticipated, the governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.*

Having considered your arguments and the totality of circumstances presented in this case, we find that the city reasonably anticipates civil litigation relating to the traffic accident. However, we do not believe nor have you demonstrated that the information contained in incident report 98-0130604 is related to the anticipated litigation. *Texas Legal Found.*, 958 S.W.2d at 483. Therefore, the city may not withhold these documents under section 552.103(a).<sup>3</sup> Incident report 98-0300206 and the CAD sheet appear to relate to the anticipated litigation, and therefore, may be withheld from disclosure pursuant to section 552.103(a).

In reaching this conclusion, however, we assume that the opposing party in the anticipated litigation has not previously had access to the information at issue; absent special circumstances, 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). We also note that 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).

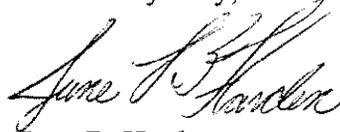
Because we are able to make a determination under section 552.103, we need not address you section 552.108 claim. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be

---

<sup>3</sup>We note that some of the information in incident report 98-0130604 implicates an individual's privacy interests. Therefore, the city should exercise caution in releasing this incident report to anyone other than the individual or the individual's attorney. See Gov't Code §§ 552.023, .352.

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,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref: ID# 119227

Enclosures: Submitted documents

cc: Ms. Paula Dyan Effle  
Cirkiel and Associates  
1901 Palm Valley Boulevard  
Round Rock, Texas 78664  
(w/o enclosures)