



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 25, 1998

Mr. Frank M. Crull
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR98-2865

Dear Mr. Crull:

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# 120015.

The Department of Public Safety (the "department") received three requests for information relating to a motor vehicle accident involving five fatalities. You state that you have already released the final accident report, the accident reconstruction report, and certain photographs.¹ You contend that the remaining responsive documents are excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show 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.*,

¹One requestor, Mr. Roland Doucette, is only requesting a copy of the accident reconstruction report. Because you state you have already released the accident reconstruction report, we assume that you have complied with Mr. Doucette's request. Additionally, the submitted documents appear to include some of the documents that you indicate have been previously disclosed. These documents should be released to all of the requestors. Gov't Code §§ 552.007(b), .223. This ruling is limited to documents not previously disclosed to the public. *Id.* § 552.301.

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).

You inform us that the Texas Department of Transportation ("TxDOT") received a claim letter from an attorney representing an injured woman who was a passenger in one of the vehicles involved in the accident. In his claim letter the attorney alleges that TxDOT's negligence caused the accident and resulted in his client's injuries. A TxDOT representative has informed you that she believes that TxDOT "will be involved in litigation based on [the] claim letter," and she has asked the department to withhold information relating to the accident from disclosure.

We find that TxDOT reasonably anticipates litigation relating to the accident, and that the documents at issue relate to the reasonably anticipated litigation. Under these circumstances, we conclude that the department may withhold the information at issue from disclosure under section 552.103(a). *See* Open Records Decision Nos. 469 (1987), 141 (1976), 121 (1976).

We note that section 552.103(a) does not generally except front page offense report information from disclosure. *See* Open Records Decision No. 362 (1983). Additionally, 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 litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Finally, we note that 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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

Ref.: ID# 120015

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