

January 7, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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Ms. Jennifer D. Soldano
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR99-0026

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121069.

The Texas Department of Transportation (the "department") received a request for "all documents and other information related to the guardrail system located on westbound US 290 at approximately .25 miles west of MP 690." You contend that the requested information is excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered the exception you claim and have reviewed a representative sample of the documents at issue.¹

Section 552.103(a) of the Government Code 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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¹We 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.

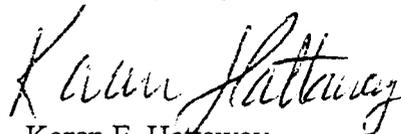
(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that 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 that meets the requirements of the Texas Tort Claims Act. The notice of claim alleges that the department is responsible for damages arising from a traffic accident at the guardrail about which the requestor is seeking information. We conclude that the department reasonably anticipates litigation relating to the traffic accident. Our review of the submitted information indicates that the information is related to the reasonably anticipated litigation. Thus, the department may withhold the information from disclosure pursuant to section 552.103(a) of the Government Code.²

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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

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²We 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 disclosure 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).

Ref: ID# 121069

Enclosures: Submitted documents

cc: Mr. Charles F. Bowes
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Houston, Texas 77002
(w/o enclosures)