

January 26, 1999



OFFICE OF THE
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STATE OF TEXAS

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Ms. Jennifer Soldano
Assistant General Counsel
Texas Department of Transportation
Dewitt C. Greet State Highway Building
125 East 11th Street
Austin, Texas 78701-2483

OR99-0242

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 #122101.

The Texas Department of Transportation (TxDOT) received a request for information relating to a fatal motor vehicle accident on March 25, 1998. You contend that all 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.*, 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 TxDOT received a claim letter from an attorney representing the deceased. In his claim letter the attorney alleges that TxDOT's negligence caused the accident and resulted in his client's death. 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. 638 (1996), 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,

David Van Brunt Price
David Van Brunt Price
Assistant Attorney General
Open Records Division

DVP\nc

Ref: ID# 122101

Enclosures: Submitted documents

cc: Mr. Ralph Warren
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(w/o enclosures)