



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 26, 2011

Ms. Janice K. Hampton  
City Attorney  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

OR2011-15717

Dear Ms. Hampton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 434358.

The City of Bryan (the "city") received a request for all photographs and reports pertaining to a specific traffic accident that occurred on August 8, 2011. You state a copy of the Peace Officer's Crash Report was released to the requestor. You claim the submitted report and photographs are excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature 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.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

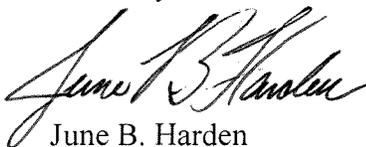
Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish litigation is reasonably anticipated, a governmental body must provide this office with “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” *Id.* Concrete evidence to support a claim litigation is reasonably anticipated may include, for example, a potential opposing party hiring an attorney who makes a demand for disputed payments and threatens to sue if the payments are not made promptly. *See* Open Records Decision No. 346 (1982); *see also* Open Records Decision No. 518 at 5 (1989) (litigation must be “realistically contemplated”).

You inform us, and the request reflects, that simultaneously with the submission of the request for information, the requestor asserted a claim for personal injuries and damages suffered by her clients in the traffic accident at issue. Thus, we agree the city reasonably anticipated litigation at the time of the request. We also find the submitted records relate to the anticipated litigation and may be withheld under section 552.103 of the Government Code.

However, 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 anticipated litigation is not excepted from disclosure under section 552.103(a), and must be disclosed. Further, 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).

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/bs

Ref: ID# 434358

Enc. Submitted documents

c: Requestor  
(w/o enclosures)