



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 31, 1995

Mr. Robert B. Ash  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR95-056

Dear Mr. Ash:

You have asked 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# 28290.

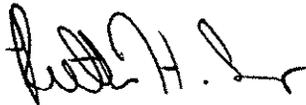
The City of El Paso (the "city") received a request for information concerning the intersection of Montana Avenue and Loop 375, including information about the signal lights and any accidents occurring at that intersection. You contend that this information is excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *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 (1990) at 4. You have supplied information showing that the city reasonably anticipates litigation. You have also supplied copies of the documents at issue for this office to review. Our review indicates those documents are related to the anticipated litigation. Since the city has met its burden of showing the applicability of section 552.103(a) to these documents, they may be withheld from disclosure.

We note that you indicate some responsive documents have been disclosed at a deposition. Absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2.

If the opposing party in the anticipated litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). The applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the city's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/rho

Ref.: ID# 28290

Enclosures: Submitted documents

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(w/o enclosures)