



Office of the Attorney General

State of Texas
May 7, 1996

DAN MORALES
ATTORNEY GENERAL

Mr. Richard D. Monroe
Deputy General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 East 11th Street
Austin, Texas 78701-2483

OR96-0673

Dear Mr. Monroe:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 31690.

The Texas Department of Transportation (the "department") received a request for information concerning the Highway SH 6 project located in Brazos County. The requestor, on behalf of his client, alleges that this particular stretch of highway was the cause of his client's automobile accident due to improperly placed barrels at the construction site of Highway SH 6. The department asserts that all of the requested information is excepted from disclosure because it relates to reasonably anticipated litigation pursuant to section 552.103(a) of the Government Code.

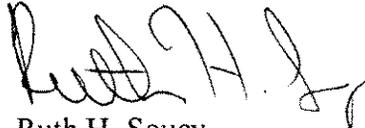
To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You contend that litigation is reasonably anticipated.

In determining whether litigation is reasonably anticipated, this office must make a case-by-case determination based on the information provided to this office. Open Records Decision No. 452 (1986) at 4. A governmental body must provide concrete evidence that litigation is realistically contemplated. Open Records Decision No. 518 (1989) at 5. We conclude that you have not established that litigation is reasonably anticipated in this matter. Although you have provided to this office a notice of claim filed with the department, we note that the incident giving rise to the notice occurred more than two years ago. You have provided no information to this office that would indicate that a lawsuit has been filed in this matter. In making the determination that litigation is not reasonably anticipated, we assume that the general two year statute of limitation applies and has not been tolled. *See* Civ. Prac. & Rem. Code §§ 16.001 (legal disability tolls

running of limitations period), .003 (two year limitations period for personal injuries). If this is an incorrect assumption, please contact this office.

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 fact 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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/SAB/ch

Ref.: ID# 31690

Enclosures: Submitted documents

cc: Mr. Jay B. Goss
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(w/o enclosures)