



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 31, 1996

Ms. Lan P. Nguyen  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR96-0854

Dear Ms. Nguyen:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 30783.

The City of Houston (the "city") received a request for the accident report and all records relating to the accident of Amber Moore, including all accident reports and records relating to accidents that occurred due to baggage handling equipment at either Hobby Airport or Houston Intercontinental Airport From November 5, 1992 to present. The city asserts that all of the requested information is excepted from disclosure pursuant to section 552.103(a) of the Government Code.

To secure the protection 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. Under Open Records Decision No. 638 (1996), a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney and (2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA") or applicable municipal statute or ordinance.

You have submitted to this office a letter from an attorney representing the injured party. Because your request for a decision from this office was made prior to the issuance of Open Records Decision No. 638 (1996), this office will assume that you are representing that the notice letter you received satisfies the requirements of the TTCA. *See* Open Records Decision No. 638 (1996). We have reviewed the records, and our review shows that they relate to the anticipated litigation. Thus, the city has met its

burden of showing that litigation is reasonably anticipated and the information at issue may be withheld pursuant to section 552.103(a).<sup>1</sup>

We note that the applicability of section 552.103(a) ends if the other parties to the anticipated litigation obtain the information or when the litigation concludes. Attorney General Opinion MW-575 (1982) at 2; Open Records Decisions Nos. 350 (1982) at 3; 349 (1982) at 2. We also note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, Open Records Decision No. 542 (1990) at 4, the city could choose to release the information at this time. Gov't Code § 552.007.

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# 30783

Enclosures: Open Records Decision No. 638 (1996)  
Submitted documents

cc: Mr. John W. Beard  
1900 West Loop South, Suite 300  
Houston, Texas 77027  
(w/enclosure ORD No. 638 (1996))

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<sup>1</sup>We also note that if in the future you assert that section 552.103(a) is applicable on the basis of the city's receipt of a notice of claim letter, you should affirmatively represent to this office that the letter complies with the requirements of the TTCA or the applicable municipal statute or ordinance.