



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 21, 1996

Ms. Jennifer D. Soldano
Assistant General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR96-2178

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# 101906.

The Texas Department of Transportation (the "department") received a request for nine categories of information related to a traffic accident, which occurred on June 19, 1996. You assert that the requested information is excepted from required public disclosure under section 552.103 of the Government Code. You have submitted to this office, for our review, a representative sample of the information responsive to the request.¹ We have considered the exception you claim and have reviewed the documents at issue.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, 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; and

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing 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. The department must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you state that the department has received a notice of claim for damages from the attorney of the allegedly injured persons. The notice of claim relates to an accident, which resulted in one fatality and injuries to other individuals, at a location "East on Highway 285." You also state that, for purposes of the Open Records Act, the notice of claim was filed in compliance with the requirements of the Texas Tort Claims Act, Civ. Prac. & Rem. Code, ch. 101. Therefore, we conclude that litigation is reasonably anticipated. Open Records Decision No. 638 (1996). The requestor seeks information which relates to the design, repair, inspection and condition of "Highway 285." Thus, we conclude that the documents submitted by the department are related to the litigation for the purposes of section 552.103(a). The entire records may, therefore, be withheld pursuant to section 552.103 of the Government Code.²

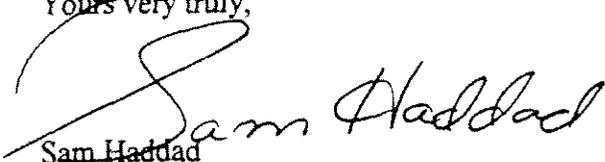
However, once information has been obtained by all parties to the litigation through discovery or otherwise, generally, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it 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).

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

² In your correspondence to this office, you have indicated that the first category of information does not exist as "Original plans . . . because they are changed and added to until they become the as-built plans." We note that chapter 552 does not apply to information that does not exist. See Open Records Decision No. 555 (1990). Additionally, you note that the requestor may obtain the information in categories 7-9 at the state library. See generally Gov't Code §§ 552.027 and 552.227. You indicate that you will inform the requestor that certain information does not exist and ~~that~~ the requestor may access categories 7 through 9 at the state library.

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

Yours very truly,


Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 101906

Enclosures: Submitted documents

cc: Mr. William R. Edwards
Edwards, Terry, Baiamonte & Edwards
P. O. Drawer 480
Corpus Christi, Texas 78403-0480
(w/o enclosures)