



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 5, 1998

Ms. Elaine S. Hengen
Assistant City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR98-0608

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 113680.

The City of El Paso Police Department (the "department") received a request for a complete copy of a case relating to a vehicular accident. Although you have released the incident and accident reports, you claim that the remaining requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted documents.

To show that section 552.103 is applicable, the department must demonstrate 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. Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the department must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 (1989) at 5. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. 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) stating that the letter complies with the notice of claim provisions of the Texas Tort Claims Act (TTCA) or applicable municipal statute or ordinance. Open Records Decision No. 638 (1996).

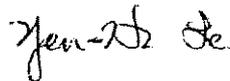
You have submitted notice of claim letters which you state comply with the notice requirements of the TTCA and the city's applicable ordinances. We conclude that litigation is reasonably anticipated, and that the documents submitted by the department are related to the reasonably anticipated litigation for purposes of section 552.103. However, basic information in a police offense report generally may not be withheld under section 552.103.

Open Records Decision No. 362 (1983). Thus, the type of information that is considered to be front page offense report information must be released, even if this information is not actually located on the front page of the offense report. See Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976)). All other information submitted by the department may be withheld pursuant to section 552.103.

We note, however, that generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103 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, and it must be disclosed. Moreover, the applicability of section 552.103 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 113680

Enclosures: Submitted documents

cc: Mr. Dwain Johnson
625 W. Yandell
El Paso, Texas 79902
(w/o enclosures)