



Office of the Attorney General
State of Texas
August 14, 1998

DAN MORALES
ATTORNEY GENERAL

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

OR98-1938

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 117608.

The Texas Department of Transportation (the "department") received a request for "as-built construction plans . . . and profile drawings and construction plats for the eastbound section of this overpass, as well as the entrance ramp," for "the 3600 block west of the eastbound side of Expressway 83 in McAllen." In response to the request, you submit to this office for review a representative sample of the requested information which you assert is responsive.¹ You claim that the 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 information.

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

¹We 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). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

political subdivision, as a consequence of the person's office or employment, is or may be a party; and

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

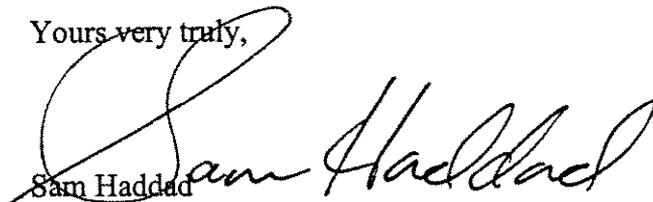
The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related 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 section 552.103(a).

In this instance, you state that the department has received a notice of claim for damages from an allegedly injured party. The notice of claim involves an accident which occurred at "the 3600 block west of the eastbound side of Expressway 83." You also state, for purposes of the act, that "[t]he notice of claim meets the notice requirements of the Texas Tort Claims Act." Therefore, we conclude that litigation is reasonably anticipated. Open Records Decision No. 638 (1996). We also conclude that the documents submitted by the department are related to the litigation for the purposes of section 552.103(a). The documents may, therefore, be withheld pursuant to section 552.103(a).

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, 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 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/mjc

Ref: ID# 117608

Enclosures: Submitted documents

cc: Mr. Toby Frerich
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(w/o enclosures)