



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 17, 1998

Mr. Michael Hayes  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR98-1948

Dear Mr. Hayes:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117534.

The City of El Paso (the "city") received a request for information relating to the requestor's client. 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.

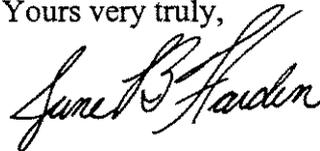
Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body 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 at 4 (1990). To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

Having considered the totality of the circumstances presented in this case, we find that the city reasonably anticipates litigation relating to the accident. Based on our review of the submitted documentation, it is apparent that the requested records relate to the

anticipated litigation. Therefore, we conclude that the city may withhold the records from disclosure pursuant to section 552.103(a) of the Government Code.<sup>1</sup>

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,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref.: ID# 117534

Enclosures: Submitted documents

cc: Mr. Jose Montes  
Attorney at Law  
609 Montana Avenue  
El Paso, Texas 79902  
(w/o enclosures)

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<sup>1</sup>We note that if the opposing party in the anticipated litigation has seen or had access to any of the records at issue, there would be no justification for withholding those records from disclosure pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).