



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 10, 1998

Mr. Patrick W. Christensen  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR98-2165

Dear Mr. Christensen:

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# 118519.

The City of San Antonio Fire Department (the "department") received a request for information relating to dispatch calls received by the EMS department. 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 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

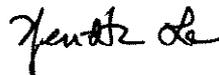
Decision No. 551 at 4 (1990). The department must meet both prongs of this test for information to be excepted under section 552.103(a).

In this instance, you state that the department has received a notice of claim arising from an automobile accident. You also state, for the purposes of the Open Records Act, that the notice of claim was filed as required under the Texas Tort Claims Act and section 150 of the city charter. 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 anticipated litigation for the purposes of section 552.103(a). The documents may, therefore, be withheld pursuant to section 552.103.<sup>1</sup>

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). Furthermore, 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 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/nc

Ref.: ID# 118519

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<sup>1</sup>We caution that some of the information may be confidential by law. See Health & Safety Code § 773.091. Therefore, if the department receives a request in the future, at a time when litigation is no longer reasonably anticipated or pending, the department should seek a ruling from this office before releasing any of the requested information. See Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).

Enclosures: Submitted documents

cc: Mr. Henry Ridgeway  
Attorney at Law  
6840 San Pedro Avenue  
Suite 200  
San Antonio, Texas 78216  
(w/o enclosures)