

January 25, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

— * —

JOHN CORNYN
Attorney General

— * —

P.O. Box 12548
Austin, Texas
78711-2548

(512) 463-2100
www.oag.state.tx.us

Mr. Frank M. Crull
Assistant General Counsel
Texas Department of Public Safety
5805 N. Lamar Boulevard
Austin, Texas 78773-0001

OR99-0220

Dear Mr. Crull:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121330.

The Texas Department of Public Safety received a request for information relating to the fatal shooting of a named individual by a State Trooper. You have supplied the responsive information, contending that it is excepted from public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The governmental body claiming this exception 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). You must meet both prongs of this test for information to be excepted under section 552.103(a).

To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Your representation that you have received a claim letter arising from the incident that is the subject of

Printed on Recycled Paper

An Equal Employment
Opportunity Employer

the request for information and that this claim letter complies with the notice requirements of the Texas Tort Claims Act, Civ. Prac. & Rem. Code ch. 101, is sufficient to establish reasonable anticipation of litigation. *See* Open Records Decision No. 638 (1996) (fact that governmental body received claim letter that it represents to this office to be in compliance with notice requirements of Texas Tort Claims Act, Civ. Prac. & Rem. Code ch. 101, or applicable municipal ordinance shows that litigation is reasonably anticipated). From our inspection of the subject information we conclude that it relates to the anticipated litigation. We conclude that the subject information may be withheld pursuant to Government Code section 552.103.

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue. Absent special circumstances, once information has been obtained by opposing parties in the litigation, section 552.103 no longer applies. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that 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,



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 121330

Enclosures: Submitted documents

cc: Ms. Tera Allison
1914 Lightsey Road, # 6
Austin, Texas 78704
(w/o enclosures)