



April 29, 1999

Ms. Linda R. Frank
Assistant City Attorney-Arlington
City of Arlington
P.O. Box 231
Arlington, Texas 76004-0231

OR99-1181

Dear Ms. Frank:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125374.

The City of Arlington (the "city") received a request for the city's "investigation and/or claim file" regarding a motor vehicle accident. You seek to withhold the portions of the requested information under sections 552.103, 552.107, and 552.111 of the Government Code.

Section 552.103(a) exempts from required public 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.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) and authorities cited therein. 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.*

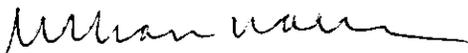
You provided a notice of claim which was filed with the city in connection with the accident to which the requested information relates, and which you say complies with chapter 101 of

the Civil Practice and Remedies Code. Having reviewed the information at issue, we conclude that you have established that the city reasonably anticipates litigation to which the information relates. You may, therefore, withhold the information at issue under section 552.103(a). *See* Open Records Decision No. 638 (1996) (notice of claim as establishing that litigation is reasonably anticipated).

We assume, however, that none of the information in the records at issue has previously been made available to the opposing party in the litigation. Absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). To the extent the opposing party has seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a). Similarly, section 552.103(a) does not generally authorize withholding materials which have already been made available to the public. Open Records Decision No. 436 (1986). 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).

Since we have disposed of this request under section 552.103(a), we need not address your other claimed exceptions to required disclosure. 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.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/eaf

Ref.: ID# 125374

encl. Submitted documents

cc: Mr. Dale A. Dickman
McReynolds Law Firm
13140 Coit Road, Suite 200
Dallas, Texas 75240-5737
(w/o enclosures)