



June 7, 1999

Ms. Laura Gordon
Trial Section Supervisor
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR99-1576

Dear Ms. Gordon:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 125232.

The City of El Paso (the "city") received a request for all information relating to a specific bus incident. You claim that the requested information is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

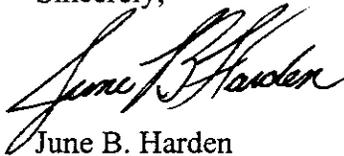
In order to establish a section 552.103 claim, the city must demonstrate that 1) litigation is pending or reasonably anticipated, and 2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the city must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986). A governmental body may establish that litigation is reasonably anticipated by showing that it has received a claim letter from an allegedly injured party or his attorney and by stating that the letter complies with the notice of claim provisions of the Texas Tort Claims Act (TTCA) or an applicable municipal ordinance or statute. Open Records Decision No. 638 (1996).

Although you have submitted a copy of the notice of claim from an attorney for the allegedly injured party, you do not state that the notice of claim complies with the notice requirements of the TTCA or an applicable municipal ordinance or statute. However, based on the totality of the circumstances presented here, we conclude that litigation is reasonably anticipated and that the submitted information is related to the reasonably anticipated litigation for the purposes of section 552.103. Therefore, you may withhold the submitted information pursuant to section 552.103.

We note, however, that generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103 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, and it must be disclosed. Moreover, the applicability of section 552.103 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.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID#125232

Encl. Submitted documents

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