



August 20, 1999

Mr. Jonathan Kaplan  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR99-2374

Dear Mr. Kaplan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127341.

The City of San Antonio (the “city”) received a request for documents relating to Brad Avenue. You seek to withhold several documents from disclosure pursuant to section 552.103 of the Government Code. We have considered the exception you claim and reviewed the documents at issue.<sup>1</sup>

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The city 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. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *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 city must meet both prongs of this test for information to be excepted under 552.103(a).

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<sup>1</sup>To the extent that additional responsive documents exist, we assume you have made these available to the requestor. Please note that the minutes of open meetings cannot be withheld from disclosure. See Open Records Decision No. 221 (1979) (official records of the public proceedings of a governmental body are among the most open of records).

In Open Records Decision No. 638 (1996), this office stated that a governmental body may demonstrate that it reasonably anticipates litigation if it receives a notice of claim letter and represents to this office that the letter is in compliance with the requirements of the Texas Tort Claims Act, Civ. Prac. & Rem. Code, ch. 101, or an applicable municipal ordinance or statute. The city received a notice of claim from an attorney representing the family of a pedestrian who was killed in a motor vehicle accident at the intersection of Brad Avenue and West Hermine. You state that “[t]his notice letter is in compliance with the requirements of the Civil Practices and Remedies Code, the Texas Tort Claims Act, and the City Code for the City of San Antonio.” The notice of claim alleges that the city was negligent in maintaining the stop sign at the intersection of Brad Avenue and West Hermine. Based on these facts, we conclude that the city reasonably anticipates litigation relating to the pedestrian’s death. The documents at issue relate to the reasonably anticipated litigation. Thus, the city may withhold the documents from disclosure under section 552.103.

In reaching this conclusion, however, we assume that the opposing party in the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103 ends once the litigation has 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.

Sincerely,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 127341

Encl. Submitted documents

cc: Mr. James Shaw  
Carabin & Shaw  
630 Broadway  
San Antonio, Texas 78215  
(w/o enclosures)