



•August 26, 1999

Ms. Joanne Wright
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR99-2417

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127092.

The Department of Transportation (the “department”) received a request for records which may indicate a malfunction of a specific traffic signal.¹ You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. You have supplied the responsive information to this office for review. We have considered the exception you claim and reviewed the submitted information.

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).

You have supplied a copy of a claim from an attorney who represents individuals who were involved in an accident in which the operation of the subject signal light is at issue. You acknowledge that this claim complies with the notice requirements of Chapter 1 of the Civil

¹You have construed the correspondence from the requestor as a request for records, correctly noting that the Public Information Act does not require a governmental body to answer factual questions. See Open Records Decision No. 555 (1990).

Practices and Remedy Code, the Texas Tort Claims Act. You have thereby established 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). We have reviewed the submitted information and conclude that it relates to this pending 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.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 127092

Encl. Submitted documents

cc: Ms. Joy Cleveland
Allstate
Market Claim Office
87 I-10 North, Suite 110
Beaumont, Texas 77707
(w/o enclosures)