



September 13, 1999

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

OR99-2530

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# 128755.

The Texas Department of Transportation (the "Department") received a request for various pieces of information concerning road construction work conducted on I-H 40 at mile post 10 near Adrian, Oldham County, Texas during August 1998. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body 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 Department must meet both prongs of this test for information to be excepted under section 552.103(a).

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 Department received a notice of claim from an attorney representing the estate

of an individual who was killed in a motor vehicle accident that occurred on I-H 40 at .3 miles east of mile post 10, near Adrian, Oldham County, Texas. You state that the notice of claim letter meets the notice requirements of the Texas Tort Claims Act. The notice of claim letter alleges that the Department was negligent in its oversight of a construction project that was in progress at the time and location of the accident. Based on these facts, we conclude that the Department reasonably anticipates litigation relating to the individual's death. The documents at issue relate to the reasonably anticipated litigation. Thus, the Department 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 interest under section 552.103 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,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\nc

Ref: ID# 128775

Encl: Submitted documents

cc: Mr. Larry Littleton  
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(w/o enclosures)