

3:04-CV-1506-H

The Department believes there is sufficient evidence to reasonably anticipate litigation in this matter. Mr. Balogh has submitted correspondence indicating he believes his property was damaged as a result of the search of his motor home and includes a repair invoice, which indicates he is seeking compensation from the Department for these expenses. Copies of these documents are enclosed. Although there is no specific demand for payment, the Department believes the letters and invoice meet the notice requirements under the Texas Tort Claims Act. Therefore, the Department believes it is reasonable to anticipate that Mr. Balogh will sue the Department of Public Safety to recover his alleged damages. Accordingly, the Department believes the first prong of the test has clearly been met.

The second prong of the test is that the requested information must relate directly to the subject matter of the anticipated litigation. Mr. Balogh has requested that he be provided with copies of the video and audio evidence pertaining to the traffic stop. Clearly any video or audio tape pertaining to this traffic stop and vehicle search will directly relate to the subject matter of the anticipated litigation, since the whole basis for Mr. Balogh's claim is that his vehicle was damaged by the officers while they searched. Therefore, the Department believes it has met both prongs of the test, and the requested information is excepted from required public inspection pursuant to Section 552.103, Government Code

Copies of Mr. Balogh's open records request and the correspondence and invoice he submitted to assert his claim are enclosed. The Department will be supplementing its request for decision with a copy of requested audio/video tape within the time frame set out in §552.301(e), Government Code.

Please feel free to contact me at (512) 424-2890, if you have any questions regarding this matter.

Sincerely,



Pamela Smith
Assistant General Counsel

cc: (w/o enclosures)
Mr. Tibor G. Balogh
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