



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 31, 1995

Ms. Lan P. Nguyen  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR95-058

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29718.

The City of Houston (the "city") received an open records request for information that you contend may be withheld from the public pursuant to the Open Records Act, section 552.103(a) of the Government Code. Section 552.103(a) applies to information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). You assert that the city expects to be made a party to litigation.

Section 552.103 requires concrete evidence that the claim that litigation may ensue is more than mere conjecture. Open Records Decision No. 518 (1989). A mere threat to sue is not sufficient to establish that litigation is reasonably anticipated. *See* Open Records Decision No. 331 (1982). There must be some objective indication that the potential party intends to follow through with the threat.

On the other hand, several threats to sue and the hiring of an attorney for the purpose of carrying out the threat is evidence that litigation is reasonably anticipated against a governmental body. *See* Open Records Decision No. 288 (1981). Moreover, when an attorney for the potential opposing party made a demand for disputed payments and threatened to sue if suitable payments were not made promptly, the exception applies. *See* Open Records Decision No. 346 (1982).

In this case, you state that the potential opposing party here was hurt in an accident at the airport. You also advise us that on October 4, 1994, an individual who said she was calling on behalf of the potential opposing party inquired as to the procedures for filing a claim against the city. However, you do not inform us that the city has received a claim for damages for injuries sustained as a result of the accident. Nor do you inform us of a threat to sue the city or that the potential opposing party has hired an attorney. We, therefore, conclude that the city may not withhold the requested information based on section 552.103(a) of the Government Code.

We are resolving this matter with this 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 may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Government Section

KHG/rho

Ref: ID# 29718

Enclosures: Submitted documents

cc: Mr. Grant Godwin  
3916 N.W. 36th Street  
Gainesville, Florida 32605  
(w/o enclosures)