



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 8, 1995

Mr. Gary W. Smith  
City Attorney  
City of Greenville  
P.O. Box 1049  
Greenville, Texas 75403-1049

OR95-061

Dear Mr. Smith:

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# 29777.

The City of Greenville (the "city") received a request for "any logs of complaints regarding a curb at 2304 Washington, Greenville." As responsive to this request, you submitted to this office a copy of a "traffic maintenance work order" for work completed on Washington Street. You assert that the city may withhold this information based on section 552.103 of the Government Code.

We do not believe that the information you enclosed is responsive to the request. We do not consider a work order to be the same as a log of complaints, even though both pertain to the same street. If the city has no other information that is responsive to the request, it should inform the requestor.

A governmental body should ask for clarification if it cannot reasonably understand a request. *See* Open Records Decision No. 304 (1982). Assuming you seek clarification from the requestor and that the requestor seeks the information you enclosed, we will consider your section 552.103 claim.

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.

You inform us that an individual has filed a claim for damages with the city for injuries resulting from an alleged accident that occurred at the curb at 2304 Washington Street. This individual has hired an attorney who has written the city manager asking that he forward the letter to the city's liability insurance company or in the alternative have the city attorney contact him so that "an amicable settlement of this matter" can be reached. You state that "[i]f the city makes no offer of settlement, then there is no option for Ms. Day but to abandon her claim or to file suit."

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).

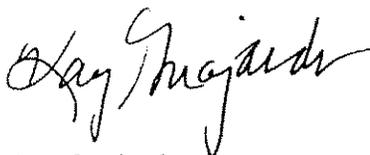
We believe that the potential opposing party here has taken objective steps toward litigation by filing a claim for damages with the city and hiring an attorney. We, therefore, conclude that you have established that litigation is reasonably anticipated in this case. Accordingly, the city may withhold the information based on section 552.103 of the Government Code.

We note that if the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349, 320 (1982). In addition, 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 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# 29777

Enclosures: Submitted document

cc: Mr. Joe Saal  
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(w/o enclosures)