



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 24, 1995

Mr. David J. Adkins
Bradbury, Adkins & Nix
Attorneys at Law
P.O. Box 59
Abilene, Texas 79604

OR95-201

Dear Mr. Adkins:

You have asked 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# 31747.

The City of Tye (the "city") received a request for information regarding any complaints of sexual discrimination filed against the city's volunteer fire department (the "department"). The city submitted to this office for review as responsive to that request a letter from a volunteer fire fighter complaining of discrimination and a grievance committee's findings concerning that complaint. You contend that this information relates to "possible litigation of a civil nature to which the City of Tye may be a party" and is therefore excepted from disclosure pursuant to section 552.103(a) of the Government Code.

To show the applicability of section 552.103(a), a governmental entity must show 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 (1990) at 4. We assume you are concerned that the volunteer fire fighter who wrote the letter of complaint may sue the city. However, the complaint letter submitted to this office contains no threats of litigation, nor have you provided any evidence to indicate that litigation is reasonably anticipated. In Open Records Decision No. 452 (1986) at 4, this office stated:

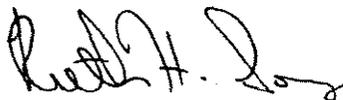
Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it -- unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. [Citations omitted.]

Because the city has not shown the applicability of section 552.103(a), the requested information must be released.

We note that even when a governmental entity shows the applicability of section 552.103(a), information may not generally be withheld from public disclosure when all parties to the pending or anticipated litigation have had access to the information. Open Records Decision No. 349 (1982) at 2. In this situation, the complaining fire fighter and the city would be the parties to anticipated litigation. Since both parties had access to the complaint letter, the letter could not have been withheld from public disclosure under section 552.103(a). You do not indicate whether the grievance findings were disclosed to the complaining fire fighter, but it is possible that they were revealed to resolve the complaint. If both parties had access to the grievance committee findings, those findings also could not have been withheld from disclosure under section 552.103(a).

In any event, because the city has not met its burden of showing that litigation is reasonably anticipated, the information at issue must be released. 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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 31747

Enclosures: Submitted documents

cc: Mr. Paul H. Brown
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(w/o enclosures)