



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 25, 1995

Ms. Tracy R. Briggs  
Assistant City Attorney  
Legal Department  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR95-210

Dear Ms. Briggs :

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# 31989.

The City of Houston (the "city") received the following request for information about traffic signal lights at an intersection:

I need written verification that the lights were hung on January 17, 1995, and that they are temporary lights, and that there was a problem with the timing of the lights due to a cable malfunction.

I also would like to know when the problem was corrected. I understand that the timing has been changed again. I need to know when this took place.

... please send me any and all information concerning the malfunctioning of these signal lights. I am particularly interested in problems on January 17, and 18, 1995.

Information you provided indicates that the city has no information concerning malfunctions for January 18, 1995. You contend that other responsive records are excepted from disclosure under section 552.103(a) of the Government Code.

To show that section 552.103(a) is applicable, the city must demonstrate 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. You indicate that the requestor was involved in an accident January 18, 1995, at the intersection about which information is sought, and that her insurance company also sought records concerning the intersection.<sup>1</sup> You submitted to this office an affidavit from the Division Chief of the city's Claims and Subrogation Division that states, in part:

It is my belief, based upon the wording of [the requestor's] request, as well as an Open Records request from State Farm, that there will be a claim against the City alleging that the traffic lights at that intersection were malfunctioning. . . . I believe [the requestor] intends to make claim against the City based on a theory that because the lights were repaired on January 17, 1995, they must have been malfunctioning on January 18, 1995; these lights, she may argue, are the reason she ran a red light and was involved in an accident.

We note that a requestor's motives and any speculation concerning the requestor's motives are not relevant to an inquiry under chapter 552. Gov't Code § 552.222 (governmental body is prohibited from inquiring into requestor's motives); Open Records Decision No. 542 (1990) at 4. This office has concluded that a reasonable likelihood of litigation exists when an attorney makes a written demand for damages and promises further legal action if such is not forthcoming. Open Records Decision No. 551 (1990). However, in Open Records Decision No. 361 (1983), we determined that litigation was not reasonably anticipated where an applicant who was rejected for employment hired an attorney who as part of his investigation sought information about that rejection. In that situation and the one at hand, records have been sought as part of an investigation but there have been no threats of litigation. 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.]

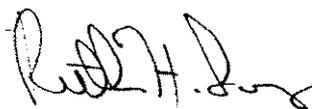
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<sup>1</sup>The insurance company sought traffic light sequence charts for January 18, 1995, and records of traffic light malfunctions on that date. The city released the traffic light sequence charts to the insurance company and has no records of traffic light malfunctions for that date. Other records are at issue in the request being addressed in this decision.

Although there may be a chance of litigation in this situation, you have presented no "concrete evidence" that litigation is reasonably anticipated such as written demands for damages and threats to sue from an attorney. *Id.* We note that you indicate no claim has been filed yet. Since the city has not met its burden of showing that section 552.103(a) is applicable, the requested information 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# 31989

Enclosures: Submitted documents

