



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 23, 1996

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

OR96-1249

Dear Ms. Calabrese:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 34716.

The City of Houston (the "city") received a request for information concerning an accident which was allegedly caused by a malfunctioning traffic light located at Crawford and Lamar on June 6, 1995. Specifically, the requestor seeks "verification of the fact that there was a malfunction in the traffic lights at this location at the time of the accident." You contend that the city has a reasonable expectation of being sued and, therefore, you seek to withhold the information pursuant to section 552.103(a) of the Government Code.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing 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 Nos. 638 (1996), 551 (1990). The city must meet both prongs of this test for information to be excepted under section 552.103(a). Open Records Decision No. 638 (1996).

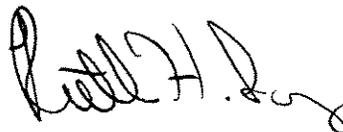
Litigation cannot be regarded as "reasonably anticipated" unless there is concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision No. 452 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* This office has concluded that litigation

is reasonably anticipated when an attorney makes a written demand for disputed payments and promises further legal action if they are not forthcoming, and when a requestor hires an attorney who threatens to sue a governmental entity. *Id.*, see also Open Records Decision Nos. 555 (1990), 346 (1982). Additionally, in Open Records Decision No. 638 (1996), this office stated that a governmental body has met its burden of showing that litigation is reasonably anticipated when it received a "notice of claim" letter *and* the governmental body represents that the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act ("TTCA"), Civ. Prac. & Rem. Code, ch. 101, or an applicable municipal ordinance or statute.

In this instance, you have submitted to this office a "repair estimate" from a claims adjuster. However, neither the request for information nor the "repair estimate" are sufficient to show that a specific threat of litigation has been made. Thus, as the city has not established that litigation is reasonably anticipated, you may not withhold from disclosure the requested information under section 552.103.

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 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 Records Division

RHS/SAB/rho

Ref.: ID# 34716

Enclosures: Open Records Decision No. 638 (1996)
Submitted documents

cc: Ms. Barbara Kamins
Greater Houston Transportation Company
1406 Hays Street
Houston, Texas 77009
(w/o submitted documents)