



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 15, 1997

Mr. James H. Koehn
Attorney at Law
2501 North Lamar Boulevard
Austin, Texas 78705

OR97-0084

Dear Mr. Koehn:

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# 103275.

The City of West Lake Hills (the "city") received a request for information concerning an incident involving the questioning and frisk search of Mr. Joe Smith by city police. However the city seeks to withhold the requested information based on section 552.103(a)(1) of the Government Code and it encloses the information it deems responsive to the request.

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 No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under section 552.103(a).

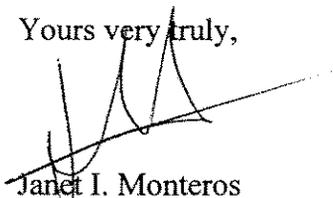
We observe that litigation cannot be regarded as "reasonably anticipated" unless there is concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982). 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. Open Records Decision Nos. 555 (1990), 551 (1990). However, the fact that an individual has hired an attorney or that a request for information was made by an attorney does not, without more, demonstrate that litigation is reasonably anticipated. Open Records Decision No. 361 (1983) at 2.

The request for information in this instance was made by an attorney on behalf of the individual involved in the frisk search incident. However, the attorney does not threaten litigation or make any demands for payment in his request for information. His letter simply states, apart from the actual request, that he "represents Joe Smith." The city offers no evidence of any threat of litigation. Therefore, we conclude that the city has not established that litigation is reasonably anticipated. Thus the city may not withhold the requested information under section 552.103(a).

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/rho

Ref.: ID# 103275

Enclosures: Submitted documents

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(w/o enclosures)