



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 22, 1997

Ms. Y. Qiyamah Taylor
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR97-0128

Dear Ms. Taylor:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 103288 .

The City of Houston (the "city") received a request for "any and all complaints, grievances, memoranda indicating or involving Ralph Stevens, supervisor, at the Solid Waste Department, as well as for Andrew Contreras, a foreman at the Solid Waste Department. Provide these for the last four (4) years." You assert that the requested information is excepted from required public disclosure based on Government Code section 552.103.

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 contend that the city reasonably anticipates litigation.

You assert that the city expects to be made a party to litigation based on the following information: The requestor is the attorney for a former city employee who has been indefinitely suspended from employment with the city. The employee has appealed the suspension. You state that if the city Civil Service Commission upholds the suspension, the employee could file a lawsuit against the city. We note that, according to the information you submitted to this office the Civil Service Commission heard the employee's appeal of his suspension on November 7, 1996. You have provided this office no information about subsequent developments of this matter. We note in particular that you have not informed us of the outcome of the Civil Service Commission hearing. Nor have you stated that the employee or his attorney has threatened to sue the city should the Civil Service Commission uphold the decision.

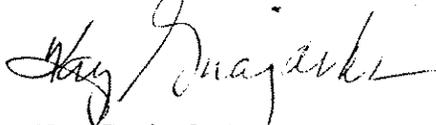
Section 552.103 requires concrete evidence that the claim that litigation may ensue is more than mere conjecture. Open Records Decision No. 518 (1989). A mere threat to sue is not sufficient to establish that litigation is reasonably anticipated. See Open Records Decision No. 331 (1982). There must be some objective indication that the potential party intends to follow through with the threat. See Open Records Decision No. 452 (1986) at 5.

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 makes a demand for disputed payments and threatens to sue if suitable payments are not made promptly, the exception applies. See Open Records Decision No. 346 (1982).

We conclude that the city has not established that litigation is reasonably anticipated in this case. Accordingly, the city may not withhold the requested information from the requestor based on section 552.103 of the Government Code.

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,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 103288

Enclosures: Submitted documents

cc: Ms. Gloria Briseno
602 Sawyer Street, Suite 204
Houston, Texas 77007
(w/o enclosures)