



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 14, 1997

Ms. Patricia A. Williams
Assistant City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR97-0785

Dear Ms. Williams:

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# 106276.

The City of Plano (the "city") received a request for "a copy of the Risk Management Report" pertaining to an automobile accident involving the requestor and a city vehicle. You contend that the report is excepted from public disclosure by section 552.103 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision 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).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 (1986) at 4. Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 (1989) at 5 (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Nor does the mere fact that an individual hires an attorney and alleges damages serve to establish that litigation is reasonably anticipated. Open Records Decision No. 361

(1983) at 2. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

You claim that litigation is reasonably anticipated because "the situation presented is one in which the City's governmental immunity is subject to waiver under the Tort Claims Act." You do not, however, represent that the requestor has made a claim, or that if such claim exists, it is in compliance with the notice requirements of the Texas Tort Claims Act, Civ. Prac. & Rem. Code ch. 101, or applicable municipal ordinance. See Open Records Decision No. 638 (1996) (fact that governmental body received claim letter that it represents to this office to be in compliance with notice requirements of Texas Tort Claims Act, Civ. Prac. & Rem. Code ch. 101, or applicable municipal ordinance shows that litigation is reasonably anticipated). Additionally, you have not shown that litigation is otherwise reasonably anticipated, *e.g.*, the city's receipt of a demand letter. We conclude you have failed to meet the requisite showing that litigation is reasonably anticipated and, therefore, you must release the information to the requestor.¹

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,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/alg

Ref.: ID# 106276

Enclosures: Submitted documents

cc: Launa D. Brockman
3209 Premier Drive, Suite 130
Plano, Texas 75075
(w/o enclosures)

¹We note that if, in the future, you assert that section 552.103(a) is applicable solely on the basis of the city's receipt of a notice of claim, you should affirmatively represent to this office that the letter complies with the requirements of the Texas Tort Claims Act or applicable municipal statute or ordinance, or otherwise establish that section 552.103 applies. See Open Records Decision No. 638 (1996).