

January 26, 1999



OFFICE OF THE  
ATTORNEY GENERAL  
STATE OF TEXAS

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Attorney General

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Mr. Frank L. Melton  
City Attorney's Office  
City of San Antonio  
Department of Aviation  
9800 Airport Boulevard  
San Antonio, Texas 78216-9990

OR99-0236

Dear Mr. Melton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 121929.

The City of San Antonio (the "city") received an open records request for video tapes concerning an incident at the San Antonio International airport. You assert that the requested information is protected from disclosure under section 552.103(a) of the Government Code. We have considered the exception you claim and we have reviewed the submitted information.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *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 at 4 (1990).

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 at 4 (1986). 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.<sup>1</sup> Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (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). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

You state that the requestor has made clear his intention to file a claim. You state that the information the requestor wants relates to anticipated litigation in this way: it could demonstrate whether the city was negligent in causing the requestor to slip and fall or later fall from a red slick chair. After a review of your arguments, we conclude that you have not shown that litigation is reasonably anticipated in this particular case for purposes of section 552.103(a). Thus, you may not withhold the requested information based on section 552.103(a).

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,

*David Van Brunt Price*  
David Van Brunt Price  
Assistant Attorney General  
Open Records Division

DVP\nc

Ref: ID# 121929

Enclosures: Submitted documents

cc: Mr. Bob Berry  
12310 Valley Forge Circle  
San Antonio, Texas 78233-5227  
(w/o enclosures)

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<sup>1</sup>In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982), and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).