



March 1, 1999

Ms. Tenley Aldredge  
Assistant County Attorney  
County of Travis  
P.O. Box 1748  
Austin, Texas 78767

OR99-0593

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 122526.

The Travis County Sheriff's Office (the "TCSO") received two requests for the personnel files and related documents for Debra Ruttley. Ms. Ruttley made one request and Ms. Ruttley's attorney, Shelly Fristoe, made the other<sup>1</sup>. You submitted to this office information responsive to the request, and you argue that section 552.103 of the Government Code excepts the requested information from disclosure. We have considered the exception you claim and have reviewed the documents at issue.

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 TCSO has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation. Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation to which the governmental body is a party is either pending or reasonably anticipated, and that (2) the requested information relates to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W. 2d, 479, 481 (Tex. App.—Austin 1997, no writ). 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

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<sup>1</sup>We have combined the two requests since the same records are at issue.

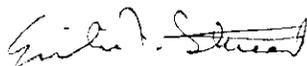
attorney for a potential opposing party.<sup>2</sup> Open Records Decision No. 555 (1990); *See* Open Records Decision No. 518 at 5 (1989) (litigation must be “realistically contemplated”). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated.. *See* Open Records Decision No. 331 (1982). Nor does the fact that an individual hires an attorney who makes a request for information establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983). Litigation is not reasonably anticipated when an individual who was rejected for employment hires an attorney to investigate the circumstances of the rejection. *Id.* Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No.452 at 4 (1986).

You assert that the letter from Mr. Fristoe to the Sheriff dated November 24, 1998, and verbal representations, presumably, made by Ms. Ruttley to persons working in the Internal Affairs Division of the TCSO are bases on which to conclude that litigation is reasonably anticipated in this case.

We have considered your arguments and conclude that you have failed to make the requisite showing that litigation is reasonably anticipated and, therefore, you may not withhold the information from the requestors 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.

Sincerely,



Emilie F. Stewart  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal employment Opportunity Commission, *see* Open Records Decision No.336 (1982); 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).

Ref: ID# 122526

Enclosures: Submitted documents

cc: Ms. Debra Ruttley  
500 Billie Brooks  
Driftwood, Texas 78619  
(w/o enclosures)

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