



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 15, 1994

Mr. A. M. Avila  
Assistant City Attorney  
The City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR94-357

Dear Mr. Avila:

You have asked this office to determine if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. The City of El Paso (the "city") has received a request for information concerning the city's investigation into a complaint made against several named city employees. You contend that this information is excepted from disclosure under section 552.103(a).<sup>1</sup> Your request was assigned ID# 24774.

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 from disclosure under section 552.103(a). See Open Records Decision No. 511 (1988) at 3.

A mere chance of litigation will not bring information within the section 552.103(a) exception. The city must demonstrate that the litigation is reasonably anticipated. Open Records Decision No. 452 (1986) at 4. In this situation, the requestor

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<sup>1</sup>Your letter also states that you "reserve the right to make further specific arguments," and that you "reserve" exceptions under sections 552.102 and 552.108, though you make no argument that either exception is even applicable. The Open Records Act does not provide for a governmental entity to "reserve" an argument that submitted information is excepted from disclosure. Gov't Code §§ 552.301 (governmental entity must seek decision within 10 days after receipt of request), .302 (failure to timely seek a decision leads to presumption information is public).

has filed a complaint of discrimination and retained an attorney. This office has previously held that there is a reasonable likelihood of litigation where a requestor hired an attorney who threatened to sue. Open Records Decision No. 452 (1986) at 6. However, you do not indicate that the attorney in this situation has asserted an intent to sue the city. Since you have not shown that litigation is reasonably anticipated, the city has not met its burden to demonstrate that the information may be excepted under section 552.103(a).

You also claim that "a majority" of the documents at issue are excepted under section 552.107(1), which excepts information if:

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

Attorney-client communications, however, may be withheld only to the extent that such communications document confidences of governmental representatives or reveal the attorney's legal advice, opinions and recommendations that are privileged within the context of an attorney-client relationship. Open Records Decision No. 574 (1990) at 2-3. Although you did not mark the information submitted to this office for review to indicate which portions you believe are excepted under section 552.107, we have marked the information that may be withheld from disclosure under section 552.107. The remaining information must be disclosed to this requestor.<sup>2</sup>

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/KHG/rho

Ref.: ID# 24774

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<sup>2</sup>We note that that some of the information may not be released to the public because it is confidential under a common-law right of privacy. We have marked this information. However, since the information is about the requestor it may not be withheld under the common-law right of privacy from this requestor. Open Records Decision No. 481 (1987) at 4.

Enclosures: Submitted documents

cc: Mr. Frank Longoria  
4962 Vista Grande  
El Paso, Texas 79922  
(w/o enclosures)