



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1995

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-051

Dear Ms. Nguyen:

You have asked 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# 30112.

The City of Houston (the "city") received a request for information about a water meter located between 5415 and 5403 Kirby. An attorney investigating his client's alleged injury due to a fall at that site has asked for the information. The city contends that information responsive to this request is excepted from disclosure pursuant to section 552.103(a) of the Government Code.¹ To show the applicability of section 552.103(a), a governmental entity must show 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.

This office has concluded that a reasonable likelihood of litigation exists when an attorney makes a written demand for damages and promises further legal action if such is not forthcoming. Open Records Decision No. 551 (1990). However, in Open Records Decision No. 361 (1983), we determined that litigation was not reasonably anticipated where an applicant who was rejected for employment hired an attorney who as part of his investigation sought information about that rejection. In that situation and the one at hand, records have been sought as part of an investigation but the attorney has not demanded damages and threatened to sue.

¹The requestor asked the city several questions. We note that Chapter 552 does not require governmental bodies to provide answers to general inquiries. Open Records Decision No. 555 (1990). Nor does it require a governmental body to create new documents or to compile information into a particular format. *Id.*

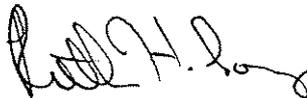
You contend that the city "has reason to anticipate the filing of a claim" in connection with the injury. However, no claim has been filed at this point. Had a claim been filed, that might show that steps toward litigation had been taken. In Open Records Decision No. 452 (1986) at 4, this office stated:

Litigation cannot be regarded as 'reasonably anticipated' unless there is more than a 'mere chance' of it -- unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. [Citations omitted.]

Although there may be a chance of litigation in this situation, you have presented no "concrete evidence" that litigation is reasonably anticipated. *Id.* Since the city has not met its burden of showing that litigation is reasonably anticipated, the information at issue must be released.

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 under section 552.301 regarding any other records. 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# 30112

Enclosures: Submitted documents

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(w/o enclosures)