



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 31, 1995

Ms. Tiffany Haertling
Hayes, Coffey & Berry
101 South Locust, Suite 601
Denton, Texas 76201

OR95-167

Dear Ms. Haertling:

The City of Hickory Creek (the "city") has asked if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. That request was assigned ID# 27207.

The city sent letters to certain property owners on Harmony Lane (the "lane"), notifying them that some of the owners of lots adjacent to the lane had asked the city to pass a resolution disclaiming interest in the lane. The letters asked the property owners to notify the city as to whether they wanted the lane to be a public or private roadway. The city has provided correspondence showing that one landowner has asserted that the lane is a private road running through her property. This landowner requested a copy of any responses received by the city.¹

The city contends that the letters received in response are excepted from disclosure under section 552.103(a). 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. The city must meet both prongs of this test to demonstrate the applicability of section 552.103(a) to the requested information.

¹The requestor also asked for a copy of the letter sent to the other landowners. We assume that the city released the letter to her or that the requestor otherwise obtained a copy of the letter, since she sent this office a copy of that letter. We therefore will address only the responses.

or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Information is excepted from disclosure under section 552.103(a) if it relates to pending or reasonably anticipated 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.

Whether litigation is reasonably anticipated must be decided on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. This office has concluded that litigation is reasonably anticipated when a requestor hires an attorney who threatens to sue the governmental entity. Open Records Decision Nos. 555; 551 (1990). However, with the passage of time, a threat to sue without more to indicate that the threat is meaningful is not sufficient to invoke section 552.103. Open Records Decision No. 351 (1982) at 2. The requestor has hired an attorney who has threatened to sue the city in a letter dated November 10, 1993. In addition, the requestor stated in a letter to this office dated June 19, 1994, that she intended to sue the city. We understand, however, that the requestor has not taken any further action or made additional threats to sue since that time. We believe that the city cannot reasonably anticipate litigation over this matter given the time period that has elapsed, especially since the requestor has done nothing else to carry out her threat. Accordingly, section 552.103 does not except the requested information from required public disclosure. You must therefore release the information in its entirety.

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,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

RHS/MAR/rho

Ref.: ID# 27207

Enclosures: Submitted documents

cc: Ms. Carolyn Powell
Adjuster
Moters Insurance Corporation
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(w/o enclosures)