



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 22, 1995

Ms. Anita Stevenson Turner
Assistant City Attorney
City of Austin
Department of Law
P.O. Box 1088
Austin, Texas 78767-8828

OR95-815

Dear Ms. Turner:

You ask 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# 33942.

The City of Austin (the "city") received an open records request for (1) the complete application files for all applicants for the position of Staff Support Services Supervisor II at the Town Lake Animal Center, the position now held by Heather Wynn; (2) the complete personnel files of Heather Wynn and her supervisor, Kurt Lapham; and (3) "all documents reflecting the rationale for hiring Heather Wynn over the other applicants for the position of Staff Support Services Supervisor II." You have submitted for our review all responsive documents to this request. You contend that all of the information in the submitted documents is excepted from required public disclosure by section 552.103(a) of the Government Code, commonly referred to as the litigation exception. You state that you have marked none of the submitted documents to reflect information that you have disclosed to the requestor because you contend that all of the information in the submitted documents is excepted from required disclosure pursuant to section 552.103(a) of the Government Code in light of anticipated civil litigation.¹

¹Because you have redacted the home addresses, the home telephone numbers and the social security numbers of Heather Wynn and Kurt Lapham, we do not address this information.

For clarity, we review the relevant facts. Richard Wynn and his wife, Heather Wynn are employed by the city in different departments. Richard Wynn's attorney has notified the city attorney of claims against the city and threatened to sue regarding Richard's employment. After his attorney sent the notice of claim letter, Richard Wynn wrote to the mayor regarding his employment. By this letter he stated that Heather had been threatened with employment termination as further retaliation against him. You contend that based upon the claims and the assertions made by Richard Wynn in his letter to the mayor, the city reasonably anticipates litigation regarding the employment of both Richard and Heather Wynn. You contend that this anticipated litigation would "include allegations regarding the performance and qualifications of both Ms. Wynn and Mr. Lapham, her supervisor."

Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state 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.

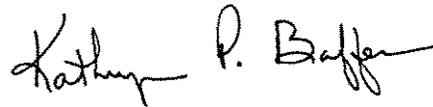
To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasijudicial proceeding. Open Records Decision No. 588 (1991). Section 552.103(a) requires concrete evidence of the claim that litigation may ensue is more than mere conjecture. Open Records Decision No. 518 (1989). This office has concluded that a reasonable likelihood of litigation exists when a requestor hires an attorney who then asserts an intent or threatens to sue. See Open Records Decision No. 555 (1990). Whether litigation is reasonably anticipated is determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

We have reviewed the records at issue. The claims noticed in Richard Wynn's attorney's letter threatening suit to the city attorney were regarding acts he alleges the city took against Richard Wynn. Though this letter does not mention acts taken against Heather Wynn, Richard's letter to the mayor indicates that acts taken against her by her supervisor are a means of retaliation against him. Based upon these facts, we conclude that you have shown that the information requested regarding Heather Wynn and Kurt Lapham are related to the anticipated litigation. Additionally, we conclude that, because Heather's qualifications may be an issue in the anticipated litigation, the employment applications of the other applicants for the position now held by Heather Wynn are also related to the reasonably anticipated litigation. Consequently, you may withhold the requested information pursuant to section 552.103(a) of the Government Code.

We note that once information has been obtained by all parties to the anticipated litigation no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3.

We are resolving this matter with this 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 may 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,



Kathryn P. Baffes
Assistant Attorney General
Open Government Section

KPB/LRD/rho

Ref.: ID# 33942

Enclosures: Submitted documents

cc: Ms. Jan H. Langer
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(w/o enclosures)