



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 18, 1996

Ms. Kari A. Hernandez
Assistant City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR96-0058

Dear Ms. Hernandez:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 35552.

The City of El Paso (the "city") received a public information request for, among other things, "a copy of the complete fire report on the fire that occurred at my warehouse at 2505 Texas ave. [sic] on July 25, 1995." You state that you have released to the requestor much of the requested information, but you seek to withhold four memoranda relating to the fire pursuant to the "litigation" exception, section 552.103(a) of the Government Code.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) at 4 and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

We have reviewed all of the materials you submitted to this office in connection with this request. However, based on the facts as you have presented them to us, we cannot conclude that you have met your burden of demonstrating the *likelihood* of litigation in this particular instance. You first contend that the city may reasonably

anticipate litigation with regard to the fire because the requestor has publicly criticized the manner in which the city fire department fought the fire, thereby allegedly resulting in additional damage being done to the property. It is well established that the litigation exception is not triggered where the only indication of litigation is a threat to sue with no follow-up. Open Records Decision No. 351 (1982). In this instance, although the requestor has criticized the operation of the city fire department, you have not informed us of any threatened litigation with regard to the fire.

You also inform us that "the requestor has already sued the City of El Paso relating to other fires that have occurred previously at this same location." You have not, however, informed us of the factual background of the prior lawsuit(s) or of the legal issues that were litigated. The mere fact that the requestor has filed suit against the city in the past is not sufficient grounds for concluding that he will *necessarily* do so again.

We therefore conclude that the city may not withhold the information at issue pursuant to section 552.103(a) of the Government Code. You have raised none of the act's other exceptions to required public disclosure with regard to this information. The city therefore must release the four memoranda to the requestor in their 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 regarding any other records*. If you have questions about this ruling, please contact our office.

Yours very truly,



Todd Reese
Assistant Attorney General
Open Records Division

RTR/RWP/rho

Ref.: ID# 35552

Enclosures: Submitted documents
Video tape

cc: Mr. Thomas L. Varkonyi
2505 Texas Avenue
El Paso, Texas 79901
(w/o enclosures)