



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 15, 1996

Mr. Edwin M. Snyder
First Assistant City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR96-0200

Dear Mr. Snyder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38307.

The City of Plano (the "city") received a request for eight categories of information pertaining to its employee who is the city's representative to and a board member of the North Central Texas Regional Certification Agency (NCTRCA). You have submitted representative samples of the requested information to this office for review, and you claim that the information is excepted from required public disclosure by section 552.103 of the Government Code.¹

Section 552.103(a)(1) excepts from disclosure information relating to litigation "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." The governmental body has the burden of providing relevant facts and documents to show that section 552.103 is applicable in a particular situation. In order to meet this burden, the governmental body 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.

¹We assume that the "representative samples" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Board members of NCTRCA voted to terminate NCTRCA's Executive Director, Mr. Carlos Cordova, from his position in February of 1995. By letter dated December 22, 1995, Mr. Cordova's attorney notified NCTRCA, the city, a member entity of NCTRCA, and others that Mr. Cordova alleges wrongful termination, violation of his civil rights, and other causes of action. In this letter Mr. Cordova's attorney extends an opportunity to discuss settlement of these claims and announces Mr. Cordova's intent to sue NCTRCA, its member entities, and individual board members if a settlement could not be reached by January 10, 1996.

You state that the city, in its capacity as a member entity of NCTRCA, anticipates litigation relating to Mr. Cordova's claims. Further, Mr. Cordova has threatened to sue the city's employee in his individual capacity as a board member of NCTRCA. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986). We have ruled that where an attorney's letter demands damages and threatens to file suit, litigation is reasonably anticipated. Open Records Decision No. 551 (1990). See Open Records Decision 638 (1995). Therefore, we agree that the city reasonably anticipates litigation relating to Mr. Cordova's termination. You have demonstrated the relationship of the requested information to reasonably anticipated litigation. Therefore, the city may withhold the requested information from disclosure pursuant to section 552.103.

We note that once all parties to litigation have gained access to the information at issue, through discovery or otherwise, section 552.103(a) is no longer applicable. Open Records Decisions Nos. 551 (1990), 454 (1986). Further, once the litigation has concluded, section 552.103(a) is no longer applicable. Open Records Decision No. 350 (1982).

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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 38307

Enclosures: Submitted documents

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(w/o enclosures)