



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 7, 1996

Mr. Robert D. Andron
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR96-0661

Dear Mr. Andron:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 27945.

The City of El Paso (the "city") received a request for records "referencing the property or a rockwall or clean-up of debris of properties located at 118 Northwind, 200 Colina Alta and 204 Colina Alta, El Paso, Texas." You claim that all of the requested information is excepted from disclosure because it relates to reasonably anticipated litigation pursuant to section 552.103(a) of the Government Code.

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. You contend that litigation is reasonably anticipated. To show that litigation is reasonably anticipated, a governmental body must provide "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 (1986) at 4.

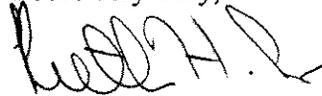
According to the information submitted to this office, a rock wall at 118 Northwind collapsed and allegedly damaged property at 204 and 212 Colina Alta. An attorney representing these property owners sent a letter to the city notifying the city of the damages. The attorney states that the notice is sent "[i]n accordance with the Texas Tort Claims Act and Municipal Ordinances and City Code of El Paso, Texas."

Under Open Records Decision No. 638 (1996), a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney and (2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act

("TTCA"). You submitted a letter from an attorney to this office for review. However, correspondence submitted to this office indicates you do not believe the letter complies with the notice provision of the TTCA. As you have not shown the applicability of section 552.103, the records at issue must be released to the requestor.

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 fact 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,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/SAB/ch

Ref.: ID# 27945

Enclosures: Open Records Decision No. 638 (1996)
Submitted documents

cc: Mr. Carlos Rincon
Ray & McChristian
801 North El Paso Street
El Paso, Texas 79902-3903
(w/o enclosures)