



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 15, 1996

Mr. Robert L. Bostick  
Henslee, Fowler & Hepworth  
9600 Great Hills Trail  
Suite 300 West  
Austin, Texas 78759-6303

OR96-0706

Dear Mr. Bostick:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39262.

The Pilot Point Independent School District (the "district") received an open records request from a private investigator for information about a district employee involved in an automobile accident. You have submitted the requested information to this office for review, and you contend that it is excepted from disclosure by section 552.103 of the Government Code.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) 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.

To establish that litigation is reasonably anticipated, a governmental body must present "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 (1986) at 4. This office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Nor does the mere fact that an individual hires an attorney and alleges damages serve to establish that

litigation is reasonably anticipated. Open Records Decision No. 361 (1983) at 2. You relate the following:

Although no suit has been filed in the present matter, it appears that steps have been taken that would show that litigation is reasonably anticipated. The event that warranted the request for the employee's personnel records is an automobile accident. A private investigator has been hired by an unnamed party to ascertain whether the employee was working within the course and scope of his duties "precisely" at the time of the off-campus accident.

The fact that an unnamed party has hired a private investigator to look into events surrounding an accident is not concrete evidence that litigation may ensue. Under the circumstances presented here, we conclude that litigation relating to the automobile accident is not reasonably anticipated. Thus, the requested information is not excepted from required public disclosure by section 552.103(a) of the Government Code and 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 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# 39262

Enclosures: Submitted documents

cc: Dana Miller, Owner  
Zenith Investigations  
419 South Carroll Blvd., Suite 2-B  
Denton, Texas 76201-5928  
(w/o enclosures)