



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 6, 1996

Mr. Richard L. Webb
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2981

OR96-0900

Dear Mr. Webb:

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# 35674.

The University of Texas Medical Branch (the "university"), a component of the University of Texas System, received an open records request for information related to Judith Cadore, "regarding an accident she had in the Administration Annex." 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. Although section 552.103(a) gives the attorney for a governmental body discretion to determine whether section 552.103(a) should be claimed, that determination is subject to review by the attorney general. Open Records Decision Nos. 551 (1990) at 5, 511 (1988) at 3.

Section 552.103(a) excepts from required public disclosure 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.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party.¹ The governmental body has the burden

¹The Open Records Act is not a substitute for the discovery process under the Texas Rules of Civil Procedure. See Attorney General Opinion JM-1048 (1989) at 3 ("the fundamental purposes of the

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.

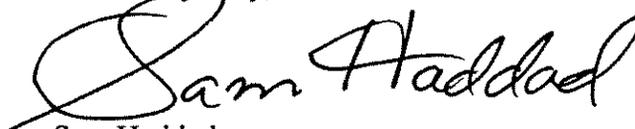
To establish that litigation is reasonably anticipated, a governmental body must present "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 (1986) at 4. This office has determined that if an individual publicly threatens to 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:

The open records request is submitted by attorney Jim Alan Adams who has noticed his representation of the injured person, Judith Cadore, in a claim associated with the incident.

The fact that a party has hired an attorney 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 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 may 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,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

(Footnote continued)

Open Records Act and of civil discovery provisions differ"); Open Records Decision No. 551 (1990) at 3-4 (discussion of relation of Open Records Act to discovery process).

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Enclosures: Submitted documents

cc: Mr. Jim Alan Adams
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(w/o enclosures)