



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 21, 1996

Mr. Miles K. Risley
Assistant City Attorney
City of Victoria
Legal Department
City Hall, Main and Juan Linn
Victoria, Texas 77902-1758

OR96-1512

Dear Mr. Risley:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 34041.

The City of Victoria (the "city") received a request for a certain police report dated April 24, 1995. You contend that the requested information is excepted from disclosure, pursuant to section 552.103(a) of the Government Code.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing 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 Nos. 638 (1996), 551 (1990). The city must meet both prongs of this test for information to be excepted under section 552.103(a). Open Records Decision No. 638 (1996).

Litigation cannot be regarded as "reasonably anticipated" unless there is concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* This office has concluded that litigation is reasonably anticipated when an attorney makes a written demand for disputed

payments and promises further legal action if they are not forthcoming, and when a requestor hires an attorney who threatens to sue a governmental entity. *Id., see also* Open Records Decision No. 555 (1990). However, you have not provided facts sufficient to show that section 552.103 is applicable. Thus, you may not withhold the requested information.

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

LRD/SAB/rho

Ref.: ID# 34041

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

cc: Ms. Natalie Leighton
1701 Victoria Station Drive
Victoria, Texas 77901
(w/o submitted document)