



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 9, 1996

Mr. Hugh W. Davis
Assistant City Attorney
City of Fort Worth
1000 Throckmorton
Fort Worth, Texas 76102

OR96-1628

Dear Mr. Davis:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 24864.

The City of Fort Worth (the "city") received a request for police records relating to the death of a particular individual who was allegedly killed by police gunfire on August 14, 1993. Specifically the requestor seeks the following:

1. A full copy of all the police reports and all subsequent reports pertaining to police activity at 940 E. Myrtle, Fort Worth, Texas, arising from the search on August 14, 1993 to the present;
2. Affidavit from the search warrant for the search that occurred at 940 E. Myrtle, Fort Worth, Texas on August 14, 1993;
3. Any other accidents at 940 E. Myrtle, Fort Worth, Texas or in the 900 block of Myrtle, Fort Worth, Texas on June 4th and August 8th, including police reports, search warrants, and affidavits;
4. An inventory of any materials taken from the residence located at 940 Myrtle, Fort Worth, Texas on August 14th through August 16th, 1993;
5. All police reports, search or arrest warrants, and search or arrest warrants affidavits pertaining to 940 E. Myrtle and to Archie Terral or anyone living at that address from July 1, 1993 to the present; and

6. All photographs of the scene and of all property seized at that location returned

The city asserts 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.

In determining whether litigation is reasonably anticipated, this office must make a case-by-case determination based on the information provided to this office. Open Records Decision No. 452 (1986) at 4. A governmental body must provide concrete evidence that litigation is realistically contemplated. Open Records Decision No. 518 (1989) at 5. We note initially that you did not submit documents that are responsive to the request for information. Although you have provided to this office a notice of claim filed with the city, we note that the incident giving rise to the notice occurred more than two years ago. You have provided no information to this office that would indicate that a lawsuit has been filed in this matter. See Open Records Decision No. 638 (1996). We conclude that you have not established that litigation is reasonably anticipated in this matter. In making the determination that litigation is not reasonably anticipated, we assume that the general two year statute of limitation applies and has not been tolled. See Civ. Prac. & Rem. Code §§ 16.001 (legal disability tolls running of limitations period), .003 (two year limitations period for personal injuries). If this is an incorrect assumption, please contact this office.

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 Records Division

RHS/SAB

Ref.: ID# 24864

Enclosures: Submitted documents

cc: Mr. Art Brender, Esq.
Burk Burnett Building, Suite 500
500 Main Street at Fourth Street
Fort Worth, Texas 76102
(w/o enclosures)