



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 9, 1996

Ms. Tamara Armstrong  
Assistant County Attorney  
County of Travis  
Austin, Texas 78767

OR96-1629

Dear Ms. Armstrong:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act. Your request was assigned ID# 33604.

Travis County (the "county") received a written request for "a copy of any and all photographs taken in connection with the events described in the Travis County Sheriff's report of a burglary occurring on June 29, 1994." You contend that the requested information is excepted from disclosure under section 552.103(a) of the Government Code.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation in which the state is or may be a party. The county 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 No. 551 (1990).

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 No. 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 Nos. 555 (1990) and 346 (1982).

You indicate that the requested information relates to a dispute regarding the destruction of fireworks and that the county has been threatened with lawsuit owned by the requestor. Based on

the information provided to this office, litigation appears to be reasonably anticipated. You have provided this office with a copy of the requested information that is at issue. We have reviewed the documents, and our review shows that they relate to the anticipated litigation. Because you have demonstrated that the requested information relates to anticipated litigation, you may withhold the requested information pursuant to section 552.103(a).

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

RHS/SAB/ch

Ref.: ID# 33604

Enclosures: Submitted documents

cc: Ms. Brenda Perritt  
1308 Weatherford Drive  
Austin, Texas 78753  
(w/o enclosures)