



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 27, 1996

Ms. Angela Jones
Assistant City Attorney
Legal Services
P. O. Box 2570
Waco, Texas 76702-2570

OR96-1778

Dear Ms. Jones:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101233.

The City of Waco (the "city") received a request for "Waco police report # 96-037868." You state that the report "narratively recounts an incident at the Waco landfill on June 21, 1996." The city contends that the police report is excepted from disclosure under section 552.103 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 Nos. 555 (1990), 346 (1982).

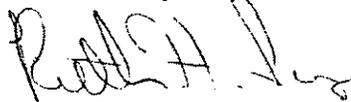
Based on the information you have provided, you have shown that litigation is reasonably anticipated. We have reviewed the report, and our review shows that the

report is related to anticipated litigation. We note, however, that first page offense or incident report information is generally considered public and must be disclosed. See generally *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). We have marked the portion of the offense report that is not front page report information and may be withheld from disclosure pursuant to section 552.103(a).

Please note that the applicability of section 552.103(a) generally ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. If the opposing party in the anticipated litigation has seen or had access to the information at issue, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the city's discretion to release this information to the requestor. Gov't Code § 552.007.

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/ch

Ref.: ID# 101233

Enclosures: Submitted documents

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