



## Office of the Attorney General

State of Texas

January 15, 1997

DAN MORALES  
ATTORNEY GENERAL

Mr. Jerry Bruce Cain  
Acting City Attorney  
City of Laredo  
P. O. Box 579  
Laredo, Texas 78042-0579

OR97-0064

Dear Mr. Cain:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102927.

The City of Laredo (the "city") received a request for "all records of retroactive pay granted to all city employees for the periods of January 1992 thru August 1993." You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. You have submitted samples of the documents requested.<sup>1</sup> We have considered the exception you claimed and have reviewed the sample documents.

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 No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under section 552.103(a).

Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it--unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982). 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. Open Records Decision Nos. 555 (1990), 551 (1990). Here, you state that, "the undersigned attorney received a

---

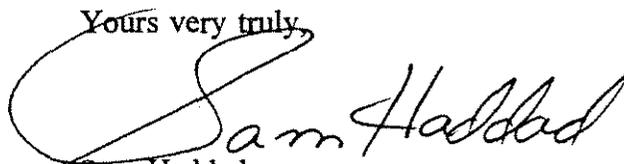
<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

telephone call from [the requestor] . . . [who] made the unsolicited disclosure that he was gathering this requested information for the express purpose of filing a lawsuit against the City of Laredo.” We note that this office has ruled that an isolated telephone threat of litigation, without more, does not trigger section 552.103. *Id.* (when requestor publicly states on more than one occasion intent to sue, that fact alone does not trigger litigation exception). In this instance, we believe that this statement, without a showing of some concrete step toward litigation, is insufficient to establish reasonable anticipation of litigation. Therefore, we conclude that the city may not withhold the requested information under section 552.103(a).

Although you have not raised any other exceptions, we note that some information revealed in the submitted records may be excepted from required public disclosure under section 552.117. Therefore, we next consider whether section 552.117 of the Government Code excepts some of the submitted information. Sections 552.024(a) and 552.117(1) provide that current or former public employees may elect to keep private their home addresses, home telephone numbers, social security numbers, and family member information. Therefore, if the city employees have made the election under section 552.024 of the Government Code to keep that information confidential, section 552.117 requires that the city redact that information prior to releasing other information. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the home address, telephone number, social security number, or family information of an official or employee who made the request for confidentiality under section 552.024 *after* the request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5. The submitted records contain no notice that the employees, whose records you have submitted, wish this type of information withheld pursuant to section 552.024. If notice was not provided prior to this open records request, the information must be released, unless any social security number is protected from disclosure by federal law.<sup>2</sup>

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,



Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/cbh

---

<sup>2</sup>Social security numbers may be confidential under the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if they were obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994).

Mr. Jerry Bruce Cain -- Page 3

Ref.: ID# 102927

Enclosures: Submitted documents

cc: Mr. Jose Luis Martinez  
4712 Maher  
Laredo, Texas 78041  
(w/o enclosures)