



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 30, 1997

Mr. Kenton D. Johnson  
Hall & Johnson, P.L.L.C.  
602 West 11th Street  
Austin, Texas 78701-2099

OR97-0196

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103340.

The City of Bartlett (the "city"), which you represent, received a request for four categories of information relating to the hiring of Hall & Johnson by the city. You state that no information responsive to the third and fourth requests exists, as neither the police department nor the city attorney has retained the law firm. You claim that the requested information, with the exception of the client letter agreement which you state the city will release to the requestor, is excepted from disclosure under sections 552.101 through 552.124 of the Government Code. However, you briefed only sections 552.101, 552.103, and 552.107. We have considered these exceptions and reviewed the submitted information. See Gov't Code § 552.301(b)(1).

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, although you state that the city could become a party to the litigation involving the city attorney, you have not offered any concrete step toward litigation against the city. Therefore, the city may not withhold the requested information under section 552.103(a).

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 (1990) at 5. We have reviewed the information submitted to this office for review and marked the information that may be withheld under section 552.107(1). The remainder of the requested information may not be withheld under section 552.107(1).

We have marked some of the information in Exhibit "B" to be withheld, as it reveals information that we concluded in Open Records Letter No. 96-2458 (1996) could be withheld under section 552.103(a). Therefore, the city may withhold that marked information in Exhibit "B" under section 552.103(a). See Open Records Decision No. 459 (1987). The city may not withhold any of the information in Exhibit "B" under section 552.107(1). Open Records Decision No. 508 (1988) (request letter from governmental body for an open records decision is generally open).<sup>1</sup>

For some of the information, you claim that the requestor has a "superior right of access" to it, as she wrote it. However, you have claimed no recognized exception under chapter 552 of the Government Code under which to withhold these documents. Therefore, the city must release them. Cf. Gov't Code § 552.022(17) ("public information includes information that is also contained in a court record).

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 on as a previous

---

<sup>1</sup>We note that one of the documents submitted in Exhibit "B" is not responsive to the request, as it was created after the city received the request for information. A document is not within the purview of chapter 552 if, when a governmental body receives a request for it, the document does not exist. Open Records Decision Nos. 476 (1987), 452 (1986). We have marked that document for your information.

determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 103340

Enclosures: Submitted documents

cc: Ms. Lana Hill  
Box 95  
Bartlett, Texas 76511  
(w/o enclosures)