Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 23, 1997

Mr. Hollis D. Young
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR97-1423

Dear Mr. Young:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 106718.

The City of San Antonio (the "city") received a request for information relating to a Dover Freight Elevator located in the Lila Cockrell Theatre. You contend that the requested information relates to a "negligence claim" against the city and is, therefore, excepted from disclosure under section 552.103(a) of the Government Code. You have submitted representative samples of the information at issue to the office for review.[1]

When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation.[2] Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation is either pending or reasonably anticipated, and that (2) the requested information relates to that litigation. *See 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.

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere

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[1]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.

[2]Section 552.103(a) excepts from required public disclosure information:

> (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
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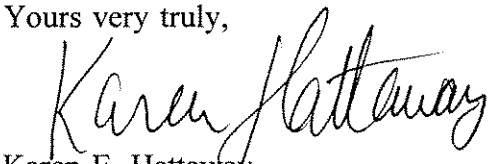
> (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

conjecture." Open Records Decision No. 452 (1986) at 4. Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.[3] Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 (1989) at 5 (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Nor does the mere fact that an individual hires an attorney and alleges damages serve to establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983) at 2. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

You claim that litigation is reasonably anticipated because a claim has been filed against the city. You do not, however, represent that the claim is in compliance with the notice requirements of the Texas Tort Claims Act ("TTCA"), Civ. Prac. & Rem. Code ch. 101, or applicable municipal ordinance. *See* Open Records Decision No. 638 (1996) (fact that governmental body received claim letter that it represents to this office to be in compliance with notice requirements of TTCA or applicable municipal ordinance shows that litigation is reasonably anticipated). We note that the attorney who filed the claim has not threatened to sue the city, *see* Open Records Decision No. 361 (1983) at 2, nor have you indicated that the city will deny the claim. We conclude that you have failed to meet the requisite showing that litigation is reasonably anticipated and, therefore, you must release the information at issue to the requestor.[4]

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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

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[3]In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

[4]We note that if, in the future, you assert that section 552.103(a) is applicable on the basis of a notice of claim letter, you should affirmatively represent to this office that the letter complies with the requirements of the TTCA or applicable municipal statute or ordinance, or otherwise establish that section 552.103(a) applies.

Ref: ID# 106718

Enclosures: Submitted documents

cc: Mr. S. Tyler Rutherford
Attorney at Law
824 S. St. Mary's St.
San Antonio, Texas 78205-3408
(w/o enclosures)