



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 12, 1997

Ms. Tracy B. Calabrese  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR97-2036

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 108441.

The City of Houston (the "city") received a request for the complete file from the investigation conducted by the Internal Affairs Division of the Houston Police Department concerning the claim by Misty Smith against the city dated January 28, 1996. You assert that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.<sup>1</sup>

To show that section 552.103 is applicable, the city must demonstrate 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. Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the city must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 (1989) at 5. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

You state, and the request for information demonstrates, that the requestor has taken over the case involving the claim of Misty Smith against the city from an attorney who originally represented

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<sup>1</sup>We note you have submitted two audio tapes for our review. We have determined that much of the information on these tapes is not responsive to the request at issue. Therefore, our ruling is limited to the information on these tapes that is related to the investigation at issue, and does not address the information that is non-responsive to the request.

Ms. Smith in this claim. You have provided this office a document showing that Ms. Smith's previous attorney made a claim for injuries against the city dated April 27, 1996, and offered to settle her claim for \$250,000, which claim you state the city has denied. On this basis, we conclude you have met your burden in establishing that litigation is reasonably anticipated in this case. Upon review of the information submitted, we conclude this information is related to the anticipated litigation and may thus be withheld from disclosure pursuant to section 552.103(a), with one exception. Included in the information submitted is a "Current Information Report" which contains information normally found on the front page of an offense report. Front page offense report information may not be withheld from disclosure under section 552.103. *See* Open Records Decision No. 597 (1991) (concluding that statutory predecessor to section 552.103 did not except basic information in offense report).

We also note that generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103, and it must be disclosed. Moreover, the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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

Yours very truly,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/ch

Ref.: ID# 108441

Enclosures: Submitted documents

cc: Mr. Greg P. Audel  
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525 Webster at Smith  
Houston, Texas 77002  
(w/o enclosures)