



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 7, 1998

Mr. Ron M. Pigott  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR98-0062

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112058.

The Texas Department of Public Safety (the "department") received an open records request for "any and all audits, management audits, inquiries, surveys, studies and or investigations regarding John West and or Legal Services during 1995, 1996, and 1997." You contend that both a 39 page complaint outlining allegations about the department's Legal Services Division and the management audit that the department conducted as a result of the complaint are excepted from required public disclosure under section 552.103 of the Government Code. You have submitted to this office for review a copy of the complaint and a representative sample of the documents comprising the 1,000 page management audit report.<sup>1</sup>

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) at 4 and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

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<sup>1</sup>In reaching our conclusion here, 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.

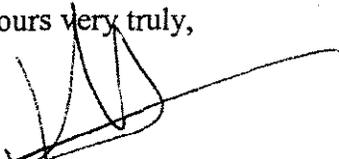
You contend that litigation relating to the requested materials is reasonably anticipated because the former department employee who filed the 39 page complaint has threaten to sue the department for his "constructive termination." Additionally, you characterize the 39 page complaint as a "notice of claim" letter that complies with the notice requirements of the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code.

Under Open Records Decision No. 638 (1996), this office determined how a governmental body must establish reasonably anticipated litigation when relying solely on a notice of claim letter. We stated that the governmental body must 1) show that it has received a claim letter from an allegedly injured party or that party's attorney and 2) state that the letter complies with the notice of claim provisions of the Texas Tort Claims Act or applicable municipal statute or ordinance. In this instance you have made the representation that the complaint filed with the department complies with the requirements of the Texas Tort Claims Act. We therefore conclude that you have met your burden of showing that litigation is reasonably anticipated and that the records at issue "relate" to the anticipated litigation. The department therefore may withhold the management audit in its entirety pursuant to section 552.103(a), with the following caveat.

In concluding that the department may withhold the management audit, we assume that none of the records contained in the audit have previously been made available to the former employee threatening the litigation. Absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent the opposing party has seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103. In this regard, we note that because the former employee possesses a copy of the 39 page complaint, this record must be released to the requestor in its entirety.

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,



Janet J. Monteros  
Assistant Attorney General  
Open Records Division

JIM/RWP/glg

Ref: ID# 112058

Enclosures: Submitted documents

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(w/o enclosures)