Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 29, 1998

Mr. Alberto J. Peña
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR98-1561

Dear Ms. Peña:

You ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 116190.

The City of San Antonio Police Chief (the "police chief") received a request for a variety of information, including "all records in [the police chief's] possession concerning practices, policies, and implementation of the Brady Act in your jurisdiction." In response to the request, you submit to this office for review the records which you assert are responsive. You assert that the requested information is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.103(a) of the Government Code reads as follows:

> (a) Information is excepted from [required public disclosure] if it is 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

> (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.
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> . . . .

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982).

Litigation cannot be regarded as "reasonably anticipated" unless there is 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). 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).

You have submitted two letters written by attorneys, who appear to represent the Texas State Rifle Association ("TSRA"). The TSRA attorneys argue that legal action, in the form of a class action, will be initiated against the police chief, and other "law enforcement agencies that fail or refuse to refund fees, and/or continue to charge fees." We have reviewed the records at issue and conclude that litigation is reasonably anticipated. In this instance, you have made the requisite showing that the requested information relates to anticipated litigation for purposes of section 552.103(a). Therefore, the requested records may be withheld under section 552.103(a) of the Government Code.[1]

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

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[1]If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

under the facts presented to us in this request and may 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

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Ref.: ID# 116190

Enclosures: Submitted documents

cc: Mr. Stephen P. Halbrook, Ph.D.
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(w/o enclosures)