



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 24, 1998

Ms. Susan G. Spinks
Assistant General Counsel
The Texas A&M University System
John B. Connally Building
301 Tarrow, 6th Floor
College Station, Texas 77843-1230

OR98-2011

Dear Ms. Spinks:

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# 117610.

Texas A&M University (the "university") received a request for "[a]ll accident and/or investigative reports concerning a forklift accident on July 8, 1997 at the Brayton Firemen Training Field involving Bryson French, Jr., an employee of Ray's Crane Service." In response to the request, you submit to this office for review a copy of the records, which you assert are responsive. You assert that the responsive records are protected from disclosure under section 552.103 of the Government Code. We have considered your arguments and have reviewed the information submitted.

To show that section 552.103(a) is applicable, the university 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 university 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 explain that the fleet insurance carrier for the university "had received an oral notice that the Workers Compensation carrier for Ray's Crane Service intended to file a lien and pursue [the university] for amounts expended by the carrier." In this instance, however,

there is no evidence that the injured party or the worker's compensation carrier has taken concrete steps toward litigation. Given the information provided, the prospect of litigation at this point is too speculative for section 552.103(a) to be applicable. Open Records Decision No. 518 (1989) at 5 (governmental body must show that litigation involving a specific matter is realistically contemplated). Therefore, at this time, the university may not withhold the submitted documents pursuant to section 552.103(a).

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,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

~~Sam Haddad~~
Assistant Attorney General
Open Records Division

SH/mjc

Ref: ID# 117610

Enclosures: Submitted documents

cc: Ms. Alice London
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(w/o enclosures)