



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 2, 1998

Mr. Scott L. Albert
Town Administrator
Town of Fairview
500 South Highway 5
Fairview, Texas 75069

OR98-2360

Dear Mr. Albert:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 118448.

The Town of Fairview (the "Town") received five requests for "a copy of the 12-page document entitled McKinney Airport Expansion Information Packet for Fairview Residents, and labeled TC/AC in the upper right-hand corner of the first page." In response to the request, you submit to this office for review the information which you assert is responsive. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.107 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 Town 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 at 4 (1990). Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the Town must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

You explain that the requested information, Exhibit A, was the subject of "considerable discussion regarding the potential impact on the legal position of the Town Council," and "such information could be misconstrued in the event of litigation." In this

instance, however, there is no evidence that any party 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. ORD 518 at 5 (governmental body must show that litigation involving a specific matter is realistically contemplated). Therefore, at this time, the Town may not withhold the submitted document pursuant to section 552.103(a). Furthermore, we note that generally a municipal ordinance may not be withheld under section 552.103(a). Open Records Decision No. 551 (1990).

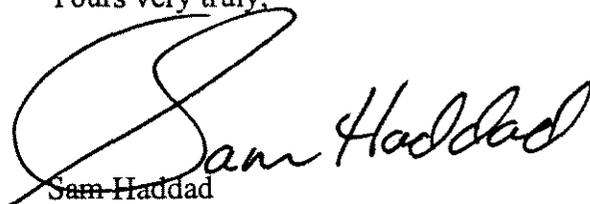
Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. Section 552.107(1) excepts information from disclosure if:

[I]t is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

When invoking this exception, the governmental body bears the burden of explaining how the particular information requested constitutes either a client confidence or a communication of legal advice or opinion. *See, e.g.*, Open Records Decision No. 589 (1991). In this instance, you have not shown how this section applies to Exhibit A. Therefore, we conclude that Exhibit A may not be withheld pursuant to section 552.107(1).

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,

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

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref: ID# 118448

Enclosures: Submitted document

cc: Suzanne Breiseth
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