



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 21, 1998

Ms. Elizabeth S. Horn  
Associate General Counsel  
Dallas Housing Authority  
3939 North Hampton Road  
Dallas, Texas 75212

OR98-3210

Dear Ms. Horn:

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# 120947.

The Housing Authority of the City of Dallas (the "housing authority") received two requests for information relating to the "Abatement, Demolition and Street Removal at George Loving Place Tx 9-11A" (the "project"). You contend that the information responsive to the request is excepted from disclosure pursuant to section 552.103 of the Government Code.<sup>1</sup> We have considered the exception you claim and have reviewed a representative sample of the documents at issue.<sup>2</sup>

Initially, we note the requestor's contention that the housing authority did not request a decision from this office within ten calendar days of receiving the requestor's first written request, and consequently that the requested information is presumed public. The Seventy-

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<sup>1</sup>You state that the housing authority is not responding to the request for "all documents containing information concerning any pre-bid surveys done for the project" because this item of the request is unclear. We note that a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision No. 561 (1990). Additionally, when a governmental body is presented with a broad request for information rather than for specific records, it should advise the requestor of the types of information available so that he may narrow his request. Open Records Decision No. 563 (1990).

<sup>2</sup>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.

fifth Legislature amended the Open Records Act to provide that a governmental body must request a decision from this office within ten business days of receiving a written request for information if it wishes to withhold information from disclosure. Gov't Code § 552.301(a). The housing authority met the ten business day deadline for requesting a decision, and therefore, the requested information is not presumed public.

Section 552.103(a) of the Government Code, the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The housing authority has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *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). The housing authority must meet both prongs of this test for information to be excepted under section 552.103(a).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.<sup>3</sup> Open Records Decision No. 555 (1990); see Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. See Open Records Decision No. 331 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

Having reviewed your arguments and the submitted documents, we find that the housing authority reasonably anticipates litigation relating to the project, and that the documents at issue relate to the anticipated litigation. However, information that has either been obtained from or provided to the opposing party in anticipated litigation, through discovery or otherwise, is not excepted from disclosure under section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). Many of the submitted documents were obtained from or previously provided to the opposing party in the anticipated litigation. These documents cannot be withheld from disclosure pursuant to section 552.103(a). The

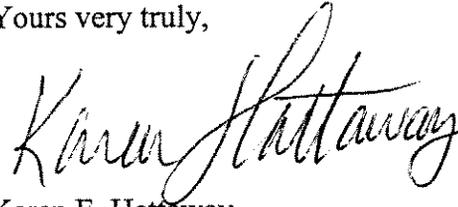
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<sup>3</sup>In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, see Open Records Decision No. 346 (1982), and threatened to sue on several occasions and hired an attorney, see Open Records Decision No. 288 (1981).

housing authority may withhold the remaining documents from disclosure pursuant to section 552.103(a). Finally, we note that the applicability of section 552.103(a) ends once the litigation has 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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 120947

Enclosures: Submitted documents

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