



June 30, 1999

Ms. Martha T. Williams
Port of Houston Authority
P.O. Box 2562
Houston, Texas 77252-2562

OR99-1824

Dear Ms. Williams:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127146.

The Port of Houston Authority (the "authority") received one request for invoice and payment records of the authority and another request for an eight volume master plan. You assert that the records at issue are protected from disclosure under section 552.103(a) of the Government Code. To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *University of Texas 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 governmental entity must meet both prongs of this test for information to be excepted under section 552.103(a).

You explain that the authority had been a party to a lawsuit, which was non-suited, and that the other party could refile the petition. You also state that a complaint was filed against the authority with the Harris County District Attorney. In Open Records Decision No. 452 at 4 (1986), this office stated:

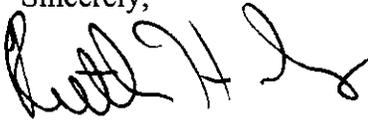
Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it -- unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. [Citations omitted.]

Litigation has been found to be reasonably anticipated when an individual has hired an attorney who demands damages and threatens to sue the governmental entity. Open Records Decision No. 551 at 2 (1990). This office also has found that litigation was not reasonably anticipated when an applicant who was rejected for employment hired an attorney, and the

attorney as part of his investigation asked for information as to why his client was rejected. Open Records Decision No. 361 (1983). In this situation the prospect of litigation is too speculative for section 552.103(a) to be applicable. Open Records Decision No. 518 at 5 (1989) (governmental body must show that litigation involving a specific matter is realistically contemplated). The information at issue must be released.

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy". The signature is fluid and cursive, with a large initial "R" and "S".

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 127146

Encl. Submitted documents

cc: Mr. James B. Blackburn, Jr.
Blackburn & Carter
3131 Eastside, Suite 450
Houston, Texas 77098
(w/o enclosures)