Office of the Attorney General · State of Texas
John Cornyn

September 30, 1999

Mr. Robert L. Dillard, III
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR99-2772

Dear Mr. Dillard:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127933.

The City of Crandall (the "city"), which you represent, received a request for ten categories of information related to a specified accident. You claim that the requested information is excepted from disclosure under sections 552.103, 552.107 and 552.111 of the Government Code. You have submitted a representative sample of the responsive information to this office for review.[1] We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. To secure the protection of section 552.103(a), a governmental body has the burden of providing relevant facts and documents to show 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.). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture; the mere chance of litigation will not establish the litigation exception. Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* This office has concluded that litigation was reasonably anticipated when the following facts have been alleged or shown: the potential adversary filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); the potential adversary 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); the governmental body received a

[1]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.

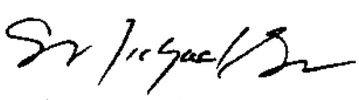
claim letter that it represents to this office to be in compliance with notice requirements of Texas Tort Claims Act, Civ. Prac. & Rem. Code ch. 101, or applicable municipal ordinance, *see* Open Records Decision Nos. 288 (1981), 638 (1996).

In this case, the city has received two letters from an attorney representing the parents of an individual injured on city property. Neither letter alleges that the city is liable in this matter, makes a demand for damages, or threatens litigation. You have not represented to this office that the letters comply with the requirements of the Texas Tort Claims Act, Civ. Prac. & Rem. Code ch. 101, or an applicable municipal ordinance. We conclude that you have not demonstrated that litigation is reasonably anticipated. The responsive information may, therefore, not be withheld under section 552.103 of the Government Code.

You seek to withhold correspondence, which you have identified as exhibit D, under sections 552.107 and 552.111. We will consider the application of section 552.107, since any protection under section 552.111 will usually be no greater or less than the protection offered under section 552.107. *See* Open Records Decision No. 574 at 2 (1990). Section 552.107(1) excepts information from disclosure if it 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. This exception does not apply to all client information held by a governmental body's attorney; rather, it excepts from public disclosure only "privileged information," *i.e.* communications made to the attorney in confidence and in furtherance of rendering professional services or that reveal the attorney's legal opinion or advice. Open Records Decision Nos. 589 at 1(1991), 574 at 3 (1990), 462 at 9-11(1987). From our review of the subject correspondence, including the attached memorandum, we conclude that it is a communication made to an attorney in confidence and in furtherance of rendering professional services. This information may therefore be withheld under section 552.107.

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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 127933

Encl. Submitted documents

cc: Mr. Troy A. Reimer
Holmes, Robnett & Garza
4514 Cole Avenue, Suite 550
Dallas, Texas 75205
(w/o enclosures)