



May 15, 2000

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

OR2000-1913

Dear Mr. Dodd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135213.

The City of Richardson (the "city"), which you represent, received a request for records relating to work performed by the city on a water line near the Brandywine Apartments. You claim that the requested information is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

In order to establish a section 552.103 claim, the city must demonstrate 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, 481 (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). Section 552.103 requires concrete evidence that litigation may ensue. Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the city 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). A governmental body may establish that litigation is reasonably anticipated by showing that it has received a claim letter from an allegedly injured party or his attorney and by stating that the letter complies with the notice of claim provisions of the Texas Tort Claims Act (TTCA) or an applicable municipal ordinance or statute. Open Records Decision No. 638 (1996).

Although you have submitted a copy of the notice of claim from the allegedly injured party, you do not state that the notice of claim complies with the notice requirements of the TTCA or an applicable municipal ordinance or statute. Furthermore, we do not believe that you have otherwise demonstrated that litigation is reasonably anticipated for the purposes of section 552.103. Open Records Decision No. 361 at 2 (1983) (mere fact that potential opposing party hires an attorney who makes request for information does not establish that litigation is reasonably anticipated). Consequently, the requested information is not excepted from disclosure under section 552.103 and must be released. *See also* Gov't Code § 552.022 (providing categories of information that are expressly made public including government contracts and vouchers for expenditures of public funds).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

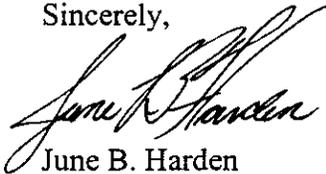
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" being particularly prominent.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/CHS/ljp

Ref: ID# 135213

Encl. Submitted documents

cc: Mr. Patrick Craine
Munsch Hardt Kopf & Harr
4000 Fountain Place
1445 Ross Avenue
Dallas, Texas 75202
(w/o enclosures)