



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 21, 2011

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2011-18836

Dear Ms. Byles:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 439725 (Fort Worth Reference No. W012079).

The Fort Worth Fire Department (the "department") received a request for all supplemental and amended reports made to a specified incident report. We note you have redacted certain Texas motor vehicle record information from the submitted photographs pursuant to the previous determinations issued in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You claim that the remaining information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 provides, in part, as follows:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body claiming this exception bears the burden of providing relevant facts and documents to demonstrate the applicability of the exception. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. 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). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* 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>1</sup> *See* Open Records Decision No. 555 (1990); *see also* 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). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish litigation is reasonably anticipated. *See* Open Records Decision No. 361 (1983).

In this instance, you state the request for information comes from an attorney that may represent the family of the victim listed in the report. You further state that the family of the victim has expressed that they believe the 9-1-1 system did not function properly and that the delayed response time contributed to the victim's death. You state the department believes the family plans to file suit. However, you have not informed us, nor do the submitted documents indicate, that the requestor or the family of the victim has actually threatened litigation or otherwise taken any concrete steps toward the initiation of litigation. *See*

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<sup>1</sup>This office also has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); 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).

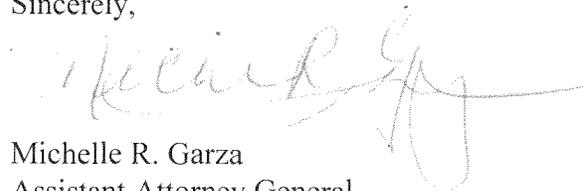
ORD 331. Therefore, we find you have not established the department reasonably anticipated litigation when it received the request for information. Accordingly, the department has failed to demonstrate the applicability of section 552.103 of the Government Code to the submitted information and none of it may be withheld under that exception.

We note you seek to withhold information relating to a 9-1-1 caller. In Open Records Letter Nos. 2011-15641 (2011) and 2011-15956 (2011), this office issued previous determinations authorizing Fort Worth to withhold the originating telephone numbers and addresses, respectively, of 9-1-1 callers furnished by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code without requesting a decision from this office.<sup>2</sup> See Gov't Code § 552.301(a); ORD 673 (listing elements of second type of previous determination under section 552.301(a) of the Government Code). You state the telephone number and address you have marked are the originating telephone number and address of a 9-1-1 caller furnished by a service supplier established in accordance with chapter 772. As such, the department must withhold the telephone number and address you have marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code in accordance with the previous determinations issued in Open Records Letter Nos. 2011-15641 and 2011-15956. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/ag

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<sup>2</sup>Section 552.101 of the Government Code encompasses information other statutes make confidential.

Ref: ID# 439725

Enc. Submitted documents

c: Requestor  
(w/o enclosures)