



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 14, 2017

Mr. Ross Laughead  
General Counsel  
District Office of Legal Services  
Alamo Community College District  
201 West Sheridan, Building C-8  
San Antonio, Texas 78204-1429

OR2017-05283

Dear Mr. Laughead:

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# 649896.

The Alamo Community College District (the "district") received a request for information pertaining to a specified incident involving the requestor's client. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides, in part, the following:

- (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). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *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 from disclosure under section 552.103(a).

To establish 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.” *See* Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim 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. *See* Open Records Decision No. 555 (1990); *see also* Open Records Decision No. 518 at 5 (1989) (litigation must be “realistically contemplated”). In addition, this office has concluded litigation was reasonably anticipated when the potential opposing party hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, or when an individual threatened to sue on several occasions and hired an attorney. *See* Open Records Decision Nos. 346 (1982), 288 (1981). In Open Records Decision No. 638 (1996), this office stated a governmental body has met its burden of showing litigation is reasonably anticipated when it received a notice of claim letter and the governmental body represents the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act (“TTCA”), Civ. Prac. & Rem. Code, ch. 101. If a governmental body does not make this representation, the claim letter is a factor that this office will consider in determining whether a governmental body has established litigation is reasonably anticipated based on the totality of the circumstances. On the other hand, this office has determined 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 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).

You assert the district reasonably anticipated litigation when it received the present request for information. You provide documentation showing, simultaneously with the receipt of the instant request, the district received a notice of claim letter pertaining to the specified incident. You do not affirmatively represent to this office the notice of claim meets the requirements of the TTCA; therefore, we will only consider the notice of claim as a factor in determining whether the district reasonably anticipated litigation arising from the incident. You explain, and the requestor states within his request for information, he represents the individual who was injured in the specified incident, and the requestor states he may initiate litigation against the district regarding the incident. Upon review of the submitted information and the totality of circumstances, we find the district has established it reasonably anticipated litigation at the time it received the present request. Further, we find the submitted information relates to the anticipated litigation. Accordingly, we conclude the district may generally withhold the submitted information under section 552.103.

We note the information at issue involves alleged criminal activity. Information normally found on the front page of an offense or incident report is generally considered public. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); see Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). This office has stated basic information about a crime may not be withheld under section 552.103 of the Government Code, even if it is related to litigation. Open Records Decision No. 362 (1983). Thus, we find the basic information from the submitted incident report may not be withheld on the basis of section 552.103. Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; see also ORD 127. Therefore, with the exception of basic information, which must be released, the district may withhold the submitted information under section 552.103 of the Government Code.<sup>1</sup>

Generally, however, once the information has been obtained by all parties to the anticipated litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends once the litigation is concluded. See Attorney General Opinion MW-575 (1982); see also Open Records Decision No. 350 (1982).

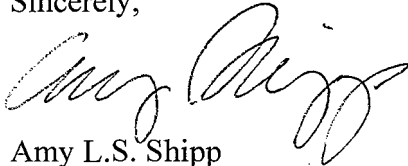
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information, except to note section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c).

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/nmd

Ref: ID# 649896

Enc. Submitted documents

c: Requestor  
(w/o enclosures)