Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1994

Ms. Jennifer Jacobs
Houston Independent School District
South Tower Pennzoil Place
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR94-015

Dear Ms. Jacobs:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552.[1] We assigned your request ID# 21065.

The Houston Independent School District (the "school district"), which you represent, has received a request for certain information regarding the requestor's son, who is a school district student. Specifically, the requestor seeks "a listing of the place and date of all meetings in which legal counsel was present and my son . . . was discussed." You advise us that the school district does not possess such a list.[2] You have submitted to us for review, however, representative samples of documents that contain the requested information. You claim that section 552.103(a) of the Open Records Act excepts the requested information from required public disclosure.

Section 552.103(a) excepts information:

> (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision

[1]We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

[2]The Open Records Act does not require a governmental body to prepare information that does not exist, Open Records Decision No. 572 (1990) at 1, nor does it require a governmental body to prepare information in a form that a member of the public requests, Open Records Decision No. 467 (1987) at 2.

> 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.

Section 552.103(a) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. *See generally* Open Records Decision No. 551 (1990). The applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision No. 350 (1982) at 3.

You advise us that the requestor filed a request for a due process hearing against the school district regarding his son's education. You advise us that "[t]he matter is ongoing." However, you have submitted for our review a letter, from Ms. Olivia Ruiz, the hearing officer in this matter, to the parties to the due process hearing, indicating that the hearing was scheduled for March 11 and March 12, 1993, and is thus now concluded. Furthermore, Ms. Ruiz has issued her decision in the matter. You also advise us that the requestor has filed an action in federal district court seeking attorneys' fees, but you do not explain how the submitted documents relate to the pending attorneys' fees action.[3] Accordingly, we conclude that the school district may not withhold the requested information under section 552.103(a) of the Government Code.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

Kymberly Oltrogge
Assistant Attorney General
Open Government Section

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[3]You state that the board of trustees of the school district has not yet decided whether it will appeal Ms. Ruiz's decision to a federal court. The fact that the school board still has the option of appealing the decision does not, in our opinion, constitute "pending" or "reasonably anticipated" litigation. *See* Open Records Decision No. 557 (1990) at 7 (concluding that civil litigation is not pending or reasonably anticipated, for purposes of statutory predecessor to Government Code § 552.103(a), if university merely contemplates bringing action against persons engaging in harassment or conspiracy).

Enclosure: Submitted documents

cc: Dr. Eldo W. Bergman, Jr.
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(w/o enclosures)