



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 30, 1994

Ms. Myra C. Schexnayder
Assistant School Attorney
Houston Independent School District
Hattie Mae White Administration Building
3830 Richmond Avenue
Houston, Texas 77027-5838

OR94-901

Dear Ms. Schexnayder:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a). Your request was assigned ID# 29683.

The Houston Independent School District ("HISD") has received a request for several items, including "all bills and invoices from Haynes and Boone relating to the investigation of the ACP department."¹ HISD asserts that this information is excepted from required public disclosure under sections 552.103 and 552.107 of the Government Code.

Section 552.103 excepts from required public disclosure information relating to litigation "to which the state or a political subdivision . . . is or may be a party." Gov't Code § 552.103(a)(1). Section 552.103 requires concrete evidence that litigation is realistically contemplated; it must be more than mere conjecture. Open Records Decision Nos. 518 (1989) at 5; 328 (1982). Thus, to secure the protection of this exception, a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990); *see also* Open Records Decision No. 588 (1991) (contested case under former Administrative Procedure and Texas Register Act, now codified at Gov't Code ch. 2001, is litigation for purposes of former V.T.C.S. art. 6252-17a, § 3(a)(3)).

¹HISD does not seek a ruling from this office regarding any of the other requested items.

You assert that the requested information relates to ongoing litigation between HISD and the requestor, and that the requestor is seeking this information in discovery. On the basis of your assertions, we conclude that HISD has demonstrated that the requested information relates to pending litigation and that it may therefore be withheld. Discovery disputes of this nature are more properly settled in a judicial forum. *See* Open Records Decision No. 551. We note, however, that HISD may not withhold the requested information under section 552.103 if the requestor has already had access to this information, through discovery or otherwise, or if the litigation is no longer pending.²

If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/LRD/rho

Ref.: ID# 29683

Enclosures: Submitted documents

cc: Mr. Wayne Dolcefino
KTRK-TV
P.O. Box 13
Houston, Texas 77001
(w/o enclosures)

²Because we resolve your request under section 552.103, we need not reach section 552.107.