



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 11, 1995

Mr. Gus Acevedo
Schulman, Walheim, Heidelberg & Acevedo
745 East Mulberry, Suite 700
San Antonio, Texas 78212

OR95-559

Dear Mr. Acevedo:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 28657.

The Donna Independent School District (the "school district"), which you represent, has received a request for information relating to grievances filed by school district employees. Specifically, the requestor seeks "all Donna ISD policies and procedures applicable to [the grievants'] concerns, particularly those involving labor-management relations, personnel, and grievance procedures." In addition, the requestor seeks "copies of the audio and video tapes you made of the informal conferences with Mr. Vela . . . [and] witnesses other than our clients." The district seeks only to withhold the requested audio and video tapes from required public disclosure.¹ The district claims that the attorney-client privilege, the attorney work-product privilege, the investigative privilege, the party communication privilege, and the informer's privilege except the audio and video tapes from required public disclosure.

We understand that the requested audio and video tapes were generated in the course of an internal investigation involving the claims of several school district employees who were allegedly reassigned for "political reasons." We first address your assertion that the school district may withhold the requested information under the attorney work-product privilege, the investigative privilege, and the party communication privilege. In Open Records Decision No. 575 (1990), this office determined that the Open Records Act encompasses the work product, investigative, or other discovery

¹We assume that you have made or will make the remainder of the requested information available to the requestor. See Open Records Decision No. 363 (1983).

privileges only to the extent that section 552.103 of the Government Code, the "litigation exception," applies. Information may be excepted from public disclosure by section 552.103(a) if litigation to which the governmental body is or may be party is pending or reasonably anticipated and the information relates to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). You claim that the requested information relates to pending litigation to which the school district is a party. We agree. Accordingly, the school district may withhold the requested audio and video tapes under section 552.103.

In reaching this conclusion, however, we assume that the opposing parties to the litigation have not previously had access to the requested information. Absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982), Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/rho

Enclosures: Submitted materials

Ref.: ID# 28657

cc: Mr. David G. Hall
Executive Director
Texas Rural Legal Aid, Inc.
259 South Texas
Weslaco, Texas 78596
(w/o enclosures)