



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 22, 1996

Mr. Jeffrey A. Rochelle  
Foster, Lewis, Langley, Gardner  
& Banack, Inc.  
112 East Pecan Street, Suite 1100  
San Antonio, Texas 78205-1533

OR96-0768

Dear Mr. Rochelle:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29293.

The North East Independent School District (the "district"), which you represent, received an open records request from an attorney for, *inter alia*, a copy of

any reprimands and/or directives issued to any . . . employee of the District [other than the requestor's client] for having allegedly made negative comments about another employee of the District since August 1990.

You contend that this information is excepted from required public disclosure by section 552.103 of the Government Code.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation. Open Records Decision No. 588 (1991) at 1. The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) at 4 (authorities cited therein). 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.*

You have not met your burden under section 552.103. You have not demonstrated that the requestor's client intends to file or is contemplating filing suit against the district, nor have you explained how the requested information would relate to any such litigation. See Attorney General Opinion H-436 (1974) (Open Records Act places on custodian of records burden of proving that records are excepted from public disclosure). The district may not withhold any of the requested information pursuant to section 552.103(a).

You state that the requestor seeks information that is not indexed by the district and thus is not "readily available" in that district personnel would have to review approximately 6,000 personnel files to compile the requested information. You contend that the district is not required to commence its search for the requested information until the requestor has paid the district for all costs associated with obtaining the information. See Gov't Code § 552.263 (bond or cash prepayment appropriate where anticipated cost of preparation of record exceeds \$100). You state that upon completion of that search, the district would then submit briefing to this office as to why any portion of the requested information is excepted from public disclosure.

We note at the outset that a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision No. 561 (1990). Further, it is the governmental body's responsibility to determine the least expensive method of supplying information under the Open Records Act. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Although the act does not specify the precise manner in which these goals should be accomplished, it is clear to this office that in this instance that perhaps the easiest and least costly method of identifying many of the records at issue would simply be to inquire of all district personnel having disciplinary responsibilities as to the extent they are familiar with instances in which such disciplinary actions have been taken. It may be that this approach to locating responsive documents would make unnecessary a more exhaustive and costly search, provided of course that the requestor is satisfied with the number and quality of the records identified.

Barring such a result, we believe the district's request for prepayment is reasonable in this instance in light of the apparent administrative burden it would place on the district to fulfill the open records request. We further note that until such payment is rendered, the district is not required to supply the public information that may be contained in the records at issue. We are closing our file on this matter at this time. Once prepayment for the public portions of the requested information is made, and the district has identified the requested information, the district may again submit its request for an open records decision regarding the portions of the requested records it believes to be excepted from required public disclosure. The district must request a decision from this office within ten days of the date the prepayment is made.

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 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 Records Division

LRD/RWP/rho

Ref.: ID# 29293

cc: Ms. Katherine L. Duff  
Brim, Arnett & Judge, P.C.  
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