



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 31, 1996

Mr. M.B. Donaldson  
Superintendent of Schools  
Aldine Independent School District  
14910 Aldine-Westfield Road  
Houston, Texas 77032

OR96-1348

Dear Mr. Donaldson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100551.

The Aldine Independent School District (the "school district") received a request for "all appraisal documents utilized to evaluate [the requestor] during the interview process by the interview committees in December, 1995 and May, 1996." You claim that this information is excepted from required public disclosure pursuant to section 552.103 of the Government Code.

When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation.<sup>1</sup> Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation is either pending or reasonably anticipated and that (2) the requested information relates to that litigation. *See 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 (1990) at 4.

---

<sup>1</sup>Section 552.103(a) excepts from required public disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, 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; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

You advise us that the requestor currently has a claim pending with the U.S. Equal Employment Opportunity Commission ("EEOC") against the school district. This office has previously held that litigation is reasonably anticipated when a potential opposing party has filed a complaint with the EEOC. *See* Open Records Decision No. 336 (1982). In this instance, you have made the requisite showing that litigation is reasonably anticipated. Our review of the records at issue indicates that they are related to this reasonably anticipated litigation. Consequently, you may withhold the requested information under section 552.103(a) of the Government Code.

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, 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 party in the anticipated litigation has 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 been 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Todd Reese  
Assistant Attorney General  
Open Records Division

RTR/rho

Ref.: ID# 100551

Enclosures: Submitted documents

cc: Ms. Betsy Hudson  
11003 Cottontop Court  
Houston, Texas 77086  
(w/o enclosures)