



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 9, 1996

Mr. James B. Ewbank, II  
Ewbank & Byrom, P.C.  
P.O. Box 2430  
Austin, Texas 78768-2430

OR96-1640

Dear Mr. Ewbank:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40726.

The Greenville Independent School District (the "school district") received a request for copies of documents involving a particular student, including records and documents sent to the school district's attorney, as well as copies of the attorney's investigation into the death of this student. You state that the school district will release to the requestors "all records formerly maintained by the school relating to the student . . . as required under FERPA . . . and §§ 552.026 and 552.114 of the Public Information Act." You claim that the remainder of the requested information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.<sup>1</sup>

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The school district has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex.

---

<sup>1</sup> As you have submitted de-identified records to us, we assume that the school district has determined which records are "education records" under the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"). See Open Records Decision No. 638 (1996). Therefore, we do not address whether the submitted information is subject to FERPA. If this assumption is incorrect, we note that parents have a special right of access to "education records" under FERPA. 20 U.S.C. § 1232g(a)(1)(A).

App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The school district must meet both prongs of this test for information to be excepted under section 552.103(a).

You claim that the requested information is "work product" and that the requestors are seeking the entire investigative file maintained by the attorney. In Open Records Decision No. 647 (1996), this office concluded that pursuant to the rationale set forth in *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 461 (Tex. 1993), a request for an attorney's entire litigation file may be denied under either section 552.103 or section 552.111 of the Government Code, depending upon whether the litigation is reasonably anticipated, pending, or concluded. Open Records Decision No. 647 (1996) at 5. We believe that here, where no litigation has been filed, the only documents the lawyer presumably has are his investigation files and those documents sent to him by the school district. The request, therefore, is for the entire attorney's file which is excepted from disclosure under the work product doctrine. Therefore, the school district may withhold the requested information.

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,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 40726

Enclosures: Submitted documents  
Open Records Decision No. 647 (1996)