



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 11, 1997

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

OR97-0321

Dear Mr. Donaldson:

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# 103724.

The Aldine Independent School District (the "district") received a request for information from a former district employee relating to the circumstances of the employee's termination, including statements from witnesses or other persons concerning the events leading to the termination. You assert that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered your arguments and reviewed the records submitted.<sup>1</sup>

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the governing body is or may be a party. The 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. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The district must meet both prongs of this test for information to be excepted under section 552.103(a).

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative samples" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Litigation cannot be regarded as "reasonably anticipated" unless there is concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982). This office has concluded that litigation is reasonably anticipated when an attorney makes a written demand for disputed payments and promises further legal action if they are not forthcoming, and when a requestor hires an attorney who threatens to sue a governmental entity. Open Records Decision Nos. 555 (1990), 551 (1990). However, the fact that an individual has hired an attorney or that a request for information was made by an attorney does not, without more, demonstrate that litigation is reasonably anticipated. Open Records Decision No. 361 (1983) at 2.

After reviewing the information submitted to this office, we conclude litigation is reasonably anticipated, and that the requested information is related to that litigation. We therefore conclude the district may withhold the information under section 552.103.

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/ch

Ref.: ID# 103724

Enclosures: Submitted documents

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(w/o enclosures)