



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 6, 1997

Mr. Peter K. Rusek
Sheehy, Lovelace & Mayfield, P.C.
510 N. Valley Mills Drive, Suite 500
Waco, Texas 76710

OR97-1033

Dear Mr. Rusek:

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# 106631.

The Waco Independent School District (the "district"), which you represent, received a request for information relating to district employee grievances and appeals. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception(s) you claim and reviewed the submitted information.

Section 552.103(a) excepts from 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.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it--unless, in other words, we have 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).

You have established that the district reasonably anticipates litigation. *See* Open Records Decision Nos. 346 (1982), 288 (1981). Because the requested information relates to anticipated litigation, the district may withhold the information from disclosure pursuant to section 552.103(a).

We note, however, that once all parties to the anticipated litigation have gained access to the requested information, through discovery or otherwise, section 552.103(a) is no longer applicable. Open Records Decisions Nos. 551 (1990), 454 (1986). In addition, the applicability of section 552.103(a) ends once the litigation has concluded. 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/ulg

Ref.: ID# 106631

Enclosures: Submitted documents

cc: Ms. Crystal Wolf
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(w/o enclosures)