



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 18, 1997

Mr. Bob Ramirez  
Escamilla & Poneck, Inc.  
1200 South Texas Building  
603 Navarro Street  
San Antonio, Texas 78205-1826

OR97-1845

Dear Mr. Ramirez:

As counsel for the Harlandale Independent School District (the "school district"), you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 108473.

The school district received a request for a copy of the entire personnel file of a certain former employee. The request is from the employee's attorney who is representing the employee in a level one grievance hearing. You have submitted to this office a copy of the employee grievance form. The employee is alleging that his dismissal was the result of the school district's discrimination against him on the basis of a disability. Among other remedies, the employee seeks reinstatement with back pay. The school district asserts that several documents are excepted from required public disclosure based on sections 552.103 and 552.107(1) of the Government Code.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is 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. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

You assert that the school district reasonably anticipates litigation. You state that the grievance hearing is the initial step in exhausting administrative remedies before initiating an Equal Employment Opportunity ("EEOC") charge.

Section 552.103 requires concrete evidence that the claim that litigation may ensue is more than mere conjecture. Open Records Decision No. 518 (1989). A mere threat to sue is not sufficient to establish that litigation is reasonably anticipated. *See* Open Records Decision No. 331 (1982). There must be some objective indication that the potential party intends to follow through with the threat. *See* Open Records Decision No. 452 (1986) at 5.

On the other hand, several threats to sue and the hiring of an attorney for the purpose of carrying out the threat is evidence that litigation is reasonably anticipated against a governmental body. *See* Open Records Decision No. 288 (1981). Moreover, when an attorney for a potential opposing party makes a demand for disputed payments and threatens to sue if suitable payments are not made promptly, the exception applies. *See* Open Records Decision No. 346 (1982). The pendency of a complaint before the EEOC indicates a substantial likelihood of litigation. *See* Open Records Decision No. 386 (1983).

We conclude that under these circumstances, the school district has not established that litigation is reasonably anticipated. Consequently, the school district may not withhold the requested documents from the requestor based on section 552.103 of the Government Code.

Section 552.107(1) states that information is excepted from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

This exception protects from disclosure attorney-client communications containing attorney advice and opinion or client confidences. *See* Open Records Decision No. 574 (1990). The documents at issue do not contain attorney-client communications. Consequently, the school district may not withhold the documents from the requestor based on section 552.107(1).

We are resolving this matter with this 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 may 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,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/alg

Ref.: ID# 108473

Enclosures: Submitted documents

cc: Mr. Clint M. Glenny, II  
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