Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 4, 1998

Mr. Robert A. Schulman
Schulman, Walheim & Heidelberg, Inc.
Attorneys at Law
112 East Pecan, Suite 3000
San Antonio, Texas 78205

OR98-0347

Dear Mr. Schulman:

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# 112935.

The United Independent School District (the "district"), which you represent, received a request for "two (2) letters sent by the law offices of Mr. Julio A. Garcia and/or Mr. Octavio Salinas, II in reference to a demand on [the district] for the payment of $3,000,000.00 and potential civil litigation involving the employment of [a district employee]." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information relating to litigation or settlement negotiations to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show 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

[1]We note that in your initial brief you asserted exceptions to public disclosure under sections 552.102, 552.104, 552.105, 552.107, 552.109, 552.111, 552.114, 552.117, 552.026, and 552.305. Because you have not indicated how these sections apply to except the requested information from disclosure, we will not consider these claimed exceptions. *See* Gov't Code § 552.301(b).

Decision No. 551 (1990) at 4. To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 (1986) at 4. Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 (1989) at 5 (litigation must be "realistically contemplated").

On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Nor does the mere fact that an individual hires an attorney and alleges damages serve to establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983) at 2. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. After reviewing your arguments, we conclude that you have not made the requisite showing that litigation is reasonably anticipated. Accordingly, you may not withhold the requested information pursuant to section 552.103.

You also assert that the information may be protected by section 552.101 of the Government Code. Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. Information may be withheld under section 552.101 in conjunction with the common-law right to privacy (1) if the information contains highly intimate or embarrassing facts about a person's private affairs such that release of the information would be highly objectionable to a reasonable person, and (2) if the information is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683; *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied) (identities of witnesses to and victims of sexual harassment were highly intimate or embarrassing information and public did not have legitimate interest in such information). Having reviewed the submitted material, we conclude that the district must withhold some of the requested information pursuant to section 552.101 of the Government Code. We have marked the information you must withhold. You must release the remainder of 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 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/glg

Ref.: ID# 112935

Enclosures: Marked documents

cc: Mr. Jeffrey J. Czar
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(w/o enclosures)