Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 29, 1998

Ms. Myra C. Schexnayder
Feldman & Rogers, L.L.P.
12 Greenway Plaza, Suite 1202
Houston, Texas 77046

OR98-1358

Dear Ms. Schexnayder:

On behalf of Pasadena Independent School District ("PISD"), 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# 115499.

PISD received a request for various information concerning a certain PISD employee. You assert that the requested information is excepted from required public disclosure based on sections 552.103 and 552.107 of the Government Code.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the 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 governmental entity must meet both prongs of this test for information to be excepted under section 552.103(a).

In Open Records Decision No. 452 (1986) at 4, this office stated:

> 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. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. [Citations omitted.]

In the instance before us, you relate to this office that the subject of the requested records has been advised by her immediate supervisor that she will not be recommended for contract renewal for the succeeding school year, 1998-1999. You inform us that in the event

the Board votes to accept the administration's recommendation as its proposed action, the individual has certain appeal rights involving and including a hearing and subsequent appeal opportunities.

Litigation has been found to be reasonably anticipated when an individual has hired an attorney who demands damages and threatens to sue the governmental entity. Open Records Decision No. 551 (1990) at 2. This office has found that litigation was not reasonably anticipated when an applicant who was rejected for employment hired an attorney, and the attorney as part of his investigation asked for information as to why his client was rejected. Open Records Decision No. 361 (1983). In this situation, the prospect of litigation is too speculative for section 552.103(a) to be applicable. Open Records Decision No. 518 (1989) at 5 (governmental body must show that litigation involving a specific matter is realistically contemplated). Consequently, you may not withhold any of the documents under section 552.103.

Section 552.107 excepts information from required public disclosure if:

> (1) 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 Rules of the State Bar of Texas; or
>
> (2) a court by order has prohibited disclosure of the information.

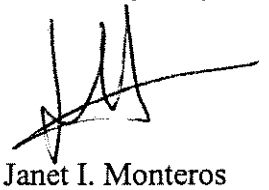
You have submitted a number of documents to this office that you contend are confidential attorney-client communications. You contend that these documents are correspondence between high level employees and the authority's legal counsel, notes made by the authority's legal counsel and drafts of documents created by the authority and its legal counsel. We observe that section 552.107 does not provide a blanket exception for all communications between clients and attorneys or all documents created by an attorney. It excepts only those communications that reveal client confidences or the attorney's legal opinion or advice. Open Records Decision Nos. 589 (1991) at 1, 574 (1990) at 3, 462 (1987) at 9-11. Section 552.107 does not except from disclosure a "basically factual recounting of events." Open Records Decision No. 574 (1990) at 5. It also does not except from disclosure "the attorney's mere documentation of calls made, meetings attended or memos sent . . . . if no notes revealing the attorney's legal advice or the client's confidences are included." *Id.*

You did not mark the information submitted for review to indicate which portions of each document you believe to be excepted under section 552.107, but instead assert that the documents in their entirety are excepted under section 552.107. We have examined the information and have marked the information that we conclude clearly documents confidences of governmental representatives or reveals an attorney's legal opinion and advice. The marked information may therefore be withheld from required public disclosure.

The remaining information does not reveal client confidences or an attorney's legal opinion and advice to the client, and may not be withheld under section 552.107.

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,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/glg

Ref.: ID# 115499

Enclosures: Marked documents

cc: Ms. Martha Barrett
NEA UniServ Director
Texas State Teachers Association
1415 Southmore
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(w/o enclosures)