



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 6, 1998

Ms. JoAnn S. Wright
Walsh, Anderson, Underwood,
Schultze & Aldridge, P.C.
P.O. Box 168046
Irving, Texas 75016-8046

OR98-1870

Dear Ms. Wright:

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# 117250.

The Mansfield Independent School District (the "district"), which you represent, received two open records requests from a district employee for all records pertaining to himself, including records regarding any grievances, investigations, and personnel actions.¹ You have submitted various documents to this office as being responsive to the requests and contend that the district may withhold these documents pursuant to section 552.103 of the Government Code.²

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991)

¹We note that the district received a prior open records request dated March 23, 1998 from the same individual seeking some of the same records requested here. You inform this office that those records are "educational records" for which the district is not required to seek an open records decision. *See* Open Records Decision No. 634 (1995). This office deems your current request for an open records decision as timely.

²Although you also contend that some of the requested records must be withheld pursuant to sections 552.026 and 552.114 of the Government Code, you have not submitted to this office any records that would be protected by these sections. *See* Open Records Decision No. 634 (1995) (educational institution wishing to withhold "educational records" or "student records" pursuant to section 552.026 or 552.114, respectively, need not request open records decision from attorney general). This ruling therefore does not address the applicability of these exceptions to the requested records.

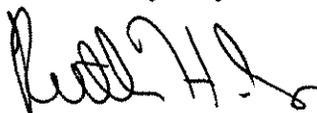
at 1. The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) at 4 and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You inform us that the requestor has filed several internal grievances with the district, one of which he has termed a "whistle blower" grievance. The requestor is being represented by two attorneys in the grievance proceedings, and has made several threats of pursuing litigation against the district. Given these representations, we conclude that litigation against the district is reasonably anticipated. We further conclude that the records at issue "relate" to the anticipated litigation for purposes of section 552.103. The district therefore may withhold the requested information at this time.

We assume, however, that none of the information in the records at issue has previously been made available to the requestor. Absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). To the extent the requestor has seen or had access to these records, there would be no justification for now withholding such information pursuant to section 552.103(a).

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS /RWP/ch

Ref.: ID# 117250

Enclosures: Submitted documents

cc: Mr. Frank Halpin