



May 16, 2000

Ms. Sue M. Lee
Henslee, Fowler, Hepworth & Schwartz
Attorneys at Law
816 Congress Avenue
Austin, Texas 78701-2443

OR2000-1935

Dear Ms. Lee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135370.

The Grand Prairie Independent School District (the "school district") received a request for information relating to Colin Powell Elementary School. Specifically, the requestor seeks "the correspondence between the school district and the four firms named in the lawsuit regarding Colin Powell Elementary School since problems surfaced in January 1998." You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information relating to litigation 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. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *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 at 4 (1990).

You explain that the school district is a party to a civil case pending in the District Court of Dallas County, 192nd Judicial District (cause number 00-43700). You have supplied to this

office a copy of the petition in that case for our review. You further inform us that the requested information is related to the pending litigation. Based on your arguments and the information before us, we conclude that you have shown that the requested information relates to pending litigation for purposes of section 552.103.

However, it appears that all of the documents you have submitted for our review have been sent to or provided by an opposing party in the pending litigation. Once information has been obtained by opposing parties to the litigation through discovery *or otherwise*, no section 552.103(a) interest exists with respect to that information, and such information must be disclosed. Open Records Decision Nos. 349 (1982), 320 (1982). Accordingly, because the submitted documents have been obtained by opposing parties to the litigation, we find that you may not withhold the submitted documents pursuant to section 552.103.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

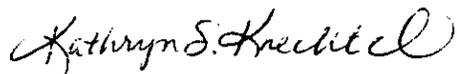
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kathryn S. Knechtel
Assistant Attorney General
Open Records Division

KSK/ljp

Ref: ID# 135370

Encl. Submitted documents

cc: Ms. Stephanie Sandoval
Arlington Morning News
1112 Copeland Road, Suite 400
Arlington, Texas 76011
(w/o enclosures)