



July 6, 2000

Ms. Cheryl Mehl
Schwartz & Eichelbaum, P.C.
800 Brazos Street, Suite 870
Austin, Texas 78701

OR2000-2523

Dear Ms. Mehl:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136760.

The Sweetwater Independent School District (the "district"), which you represent, received a request for "any/all correspondence or documents with the United States Department of Education, Office for Civil Rights, that has [sic] been faxed or mailed or otherwise sent to [the district] since February 4, 2000, pertaining to Civil Rights Case Number 06981427." You contend that the requested information is excepted from disclosure under section 552.103 of the Government Code.

To secure the protection of section 552.103(a) of the Government Code, a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); Open Records Decision No. 588 at 1 (1991). The governmental body must also demonstrate that the litigation was pending or reasonably anticipated as of the date of receipt of the records request. Gov't Code § 552.103(c). You explain that on October 29, 1998, the district was informed by the Dallas office of the Office for Civil Rights of the United States Department of Education that the district was the subject of a complaint alleging violations of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681. You further inform us that since that time, the district has been responding to requests for information from the Department of Education and attempting to resolve the complaint through a "Commitment to Resolve" agreement with the Office of Civil Rights.

When a Title IX complaint is filed with the Department of Education, the department conducts an investigation into the allegations contained in the complaint. 34 C.F.R.

§ 100.7(c). If the investigation indicates a failure to comply with the requirements of Title IX, the Department of Education attempts to resolve the matter informally, if possible. 34 C.F.R. § 100.7(d). However, if the complaint cannot be informally resolved, the Department of Education may refer the matter to the United States Department of Justice “with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under” Title IX, among other laws. 34 C.F.R. § 100.8(a).

We conclude, therefore, that the filing of the Title IX complaint constitutes evidence that the likelihood of litigation against the district is more than mere conjecture. Further, you have demonstrated that this litigation was reasonably anticipated on the day the district received the records request. Finally, after reviewing the information at issue, we conclude that the requested information “relates” to that litigation for purposes of section 552.103.

This does not, however, end our discussion on the applicability of section 552.103. 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 (1982), 320 (1982). In this instance, the opposing party to the anticipated litigation, the Department of Education, has had prior access to all of the information at issue. You have not demonstrated that the district reasonably anticipates litigation involving any other entity or individual. Consequently, section 552.103 does not except the requested information from required public disclosure. Because you have raised no other applicable exception to public disclosure, we conclude that the district must release the requested information in its entirety.

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).

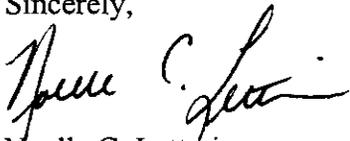
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/RWP/ljp

Ref: ID# 136760

Encl. Submitted documents

cc: Ms. Carolyn Campbell
233 County Road 370
Sweetwater, Texas 79556
(w/o enclosures)