



October 4, 2000

Mr. James R. Raup  
McGinnis, Lochridge & Kilgore, L.L.P.  
1300 Capitol Center  
919 Congress Avenue, Suite 1300  
Austin, Texas 78701

OR2000-3815

Dear Mr. Raup:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140067.

The Round Rock Independent School District (the "district"), which you represent, received a request for a copy of the employment contract, salary, benefits, job description, and supervisor for the position of Director of Special Programs. The requestor also asks for the salary schedule for administrative positions in the district, the names and ethnicity of persons offered the position, and copies of rejections of the offer of employment. You explain that you have submitted the existing responsive documents.<sup>1</sup> You claim that the submitted 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.<sup>2</sup>

Section 552.103(a) reads as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or

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<sup>1</sup>We note that the Public Information Act (the "Act") applies only to information already in existence. See Gov't Code §§ 552.002, .021, .227, .351. A governmental body need not prepare new information in response to a request. See Open Records Decision No. 452 at 2-3 (1986). However, a governmental body must make a good faith effort to relate a request to information which it holds. See Open Records Decision No. 561 at 8 (1990).

<sup>2</sup>We note that the requestor submitted comments and contends that the district failed to inform him of the request for this decision in accordance with section 552.301(d). Gov't Code § 552.301(d) (requiring governmental body to notify requestor of request for a decision). However, the district sent the requestor a copy of the request for the decision. This office interprets section 552.301(d) to mean that a governmental body substantially complies with subsection (d) by sending the requestor a copy of the governmental body's written communication to the attorney general requesting a decision.

employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing 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 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). Further, litigation must be pending or reasonably anticipated on the date the requestor applies to the public information officer for access. Gov't Code § 552.103(c).

You have submitted evidence that the requestor has filed a complaint of discrimination against the district with the Texas Commission on Human Rights (the "TCHR"). This office has ruled that a pending complaint before the Equal Employment Opportunity Commission (the "EEOC") indicates a substantial likelihood of litigation relating to the complaint. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). The TCHR operates as a federal deferral agency under section 706(c) of title VII, 42 U.S.C. § 2000e-5. The EEOC defers jurisdiction over complaints alleging employment discrimination to the TCHR. *Id.* Therefore, we agree that the district has shown that it reasonably anticipates litigation relating to the TCHR complaint. Further, we conclude that the submitted information relates to the anticipated litigation.

However, we note that a portion of the requested information is made public under section 552.022(a) of the Government Code. Section 552.022 provides the following:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]

Section 552.103 is a discretionary exception under the Public Information Act and is, therefore, not other law that makes the requested information confidential. *See* Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation and does not itself make information confidential). Therefore, you must release the name, salary, and title of the Director of Special Programs and salary schedule for administrative positions under section 552.022(a)(2) of the Government Code. You may withhold the remaining submitted information under section 552.103.

We note that if the opposing party in the litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). Further, section 552.103 does not authorize the withholding of information which has already been made available to the public. Open Records Decision No. 436 (1986). Therefore, if the job description was publically posted or otherwise made available to the requestor, who is the potential opposing party, the district must release the job description. We note that the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982), Open Records Decision No. 350 (1982). However, if the records contain information that is confidential by law, you must not release such information even at the conclusion of the litigation. Gov't Code §§ 552.101, .352.

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

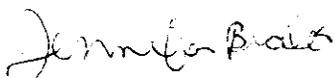
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,



Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB\er

Ref: ID# 140067

Encl: Marked documents

cc: Mr. Oscar M. Cardenas  
8007 Nairn Drive  
Austin, Texas 78749  
(w/o enclosures)