



November 21, 2000

Ms. Carla A. Robinson
West, Webb, Allbritton & Gentry
1515 Emerald Plaza
College Station, Texas 77845-1515

OR2000-4487

Dear Ms. Robinson:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 141679.

The College Station Independent School District (the "school district"), which you represent, received a request for 1) a copy of the guidelines, instructions, or training manuals used in evaluating and scoring applicants during screening interviews; 2) the Board, Superintendent or Human Resources Department policy or directive that provides for screening interviews; and 3) a tabulation of the new faculty hires for the school district since March 2000, broken down into certain statistical categories. You make no mention of the requested materials regarding the evaluation and scoring of screening interviews. Consequently, if the school district has not yet released these materials, it must do so at this time. *See* Gov't Code §§ 552.301, .302. As to the requested policy providing for the use of screening interviews, you state that no such policy exists. Accordingly, the school district has no obligation under the Public Information Act in regard to the requested policy. *See* Open Records Decision No. 558 at 1-2 (1990) (noting that Public Information Act does not ordinarily require a governmental body to obtain information not in its possession). Finally, in regard to the requested tabulation of new hires, you claim that the information responsive to this request item 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 since the time that the governmental body received the request: (1) litigation was pending or reasonably anticipated on the date the request was received, and (2) the information at

issue is related to that litigation. Gov't Code § 552.103; *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). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

To establish that litigation is reasonably anticipated, a governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.¹ Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Nor does the mere fact that an individual hires an attorney and alleges damages establish that litigation is reasonably anticipated. Open Records Decision No. 361 at 2 (1983). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

You have submitted correspondence between the school district and the requestor which indicates that the requestor was refused a teaching position with the school district. The requestor has since expressed to the school district her belief that the school district's evaluation and hiring practices are "arbitrary" and may be "prejudicial and based on personal bias." However, you do not state, and the submitted letters do not indicate, that the requestor has actually threatened to sue the school district, or that she has taken objective steps toward filing suit. Therefore, the school district has not met its burden of showing anticipated litigation, and accordingly, it must release the submitted information. *See* Gov't Code § 552.103; *see also* Gov't Code § 552.022(a)(2) (requiring release of the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body).

¹In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

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).

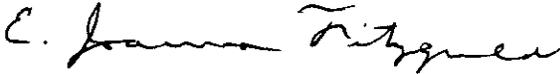
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

A handwritten signature in cursive script that reads "E. Joanna Fitzgerald".

E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF/er

Ref: ID# 141684

Encl: Submitted documents

cc: Mr. Debbie Callaway
1800 Springhaven Circle
College Station, Texas 77840
(w/o enclosures)