



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 19, 2008

Ms. Ellen H. Spalding  
Feldman, Rogers, Morris & Grover, L.L.P.  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2008-03636

Dear Ms. Spalding:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 305155.

The Klein Independent School District (the "district"), which you represent, received a request for copies of the complete training file of a named former LSSP intern. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

First, the requestor asserts the district failed to comply with section 552.301(b)(1) of the Government Code. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(a), (b). You state that the district received the request for information on December 12, 2007. You state that the district was closed December 17, 2007 through January 1, 2008. The requestor contends that an administrative crew had to be working at this time. Whether the district was closed during this period so as to toll the ten business day deadline is a question of fact. The office is unable to resolve disputes of fact in the open

records ruling process. Accordingly, we must rely on the facts alleged to us by the governmental body requesting our opinion for the facts. The district asserts that its offices were closed December 17, 2007 through January 1, 2008. Thus, the district was required to submit the information prescribed by section 552.301 by January 11, 2008. The district requested a ruling from this office on January 10, 2008. Therefore, the district timely requested a decision from this office.

Although the requestor asserts the district also failed to provide a written statement that the district wishes to withhold information pursuant to the requirements of section 552.301(d)(1) of the Government Code, the requestor acknowledges that he received a copy of the district's letter to the Attorney General's office that shows the district seeks to withhold the requested information. Section 552.301(d)(1) requires a governmental body that requests an attorney general decision to withhold information to provide the requestor, within ten business days of receipt of the request for information, a written statement that it has asked for an attorney general decision. *Id.* § 552.301(d)(1). Thus, we find the district fully complied with section 552.301.

Section 552.103 of the Government Code provides:

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

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for information and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (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).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* 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. 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).

In this instance, you state that the requestor filed formal complaints against two named individuals with the Texas State Board of Examiners of Psychologists (the "TSBEP"). You state that these complaints are pending at the TSBEP and an investigation is in progress. You argue that the TSBEP's investigation of the complaint is an "administrative proceeding" that is a form of anticipated litigation. *See* Open Records Decision No. 588 (1991) (listing considerations relevant to determination of whether administrative proceeding constitutes litigation for purposes of section 552.103). You have not explained, however, how or why the district's participation in this complaint and investigative process constitutes pending or anticipated "litigation" for the purposes of section 552.103. Further, you do not indicate, and it is not apparent, that the district is a party to any anticipated or pending litigation involving the TSBEP's investigation of the complaint against the former employee. Thus, because you have not established that litigation involving the district was pending or that the district reasonably anticipated litigation when it received the request for information, the district may not withhold the submitted information under section 552.103. *See* Open Records Decision Nos. 638 (1996) (purpose of section 552.103 is to protect litigation interests of governmental body claiming exception), 551 (section 552.103 enables governmental body to protect its interest in litigation).

You also assert that some of the submitted information is excepted under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Pursuant to section 552.117(a)(1), the district must withhold this personal information that pertains to a current or former employee of the district who elected, prior to the district's receipt of the request for information, to keep such information confidential. Such information may not be withheld for individuals who did not make a timely election. You inform us that the employee at issue timely elected to keep her information at issue confidential. Thus, we

agree that the district must withhold the information we have marked under section 552.117 of the Government Code. The remaining submitted information must be released to the requestor.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. 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 Hadassah Schloss at the Office of the Attorney General 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,



Jessica J. Maloney  
Assistant Attorney General  
Open Records Division

JJM/jh

Ref: ID# 305155

Enc. Submitted documents

c: Mr. Sean Kenneth Connelly  
P.O. Box 286  
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(w/o enclosures)