



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 20, 2009

Mr. S. Anthony Safi  
Mounce, Green, Myers, Safi, Paxson, & Galatzan  
P.O. Box 1977  
El Paso, Texas 79950-1977

OR2009-03646

Dear Mr. Safi:

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# 338533.

The El Paso Independent School District (the "district"), which you represent, received a request for documentation pertaining to a specified sexual harassment case and a copy of a specified incident or accident report. 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.

You state that you do not need a ruling from our office regarding the second half of the request, which seeks a copy of a specified incident or accident report. We assume this means that to the extent the requested incident or accident report existed when the district received the present request, it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.103 of the Government Code provides in part:

- (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). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. 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 [1<sup>st</sup> Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

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." *See Open Records Decision No. 452 at 4 (1986).* Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* You represent, and the submitted documents reflect, that the requestor filed a claim of discrimination with the Equal Employment Opportunity Commission ("EEOC") prior to the date of the district's receipt of this request for information. You also state that the submitted information is related to the requestor's discrimination claim. This office has stated that a pending EEOC complaint indicates that litigation is reasonably anticipated. *See Open Records Decision Nos. 386 at 2 (1983), 336 at 1(1982).* Therefore, based on your representations and the submitted documentation, we find that the district reasonably anticipated litigation on the date of its receipt of this request for information. We also find that the submitted information is related to the anticipated litigation. We therefore conclude that section 552.103 is generally applicable to the submitted information.

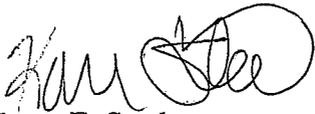
We note, however, that the requestor, who is representing the opposing party in the anticipated litigation, already has seen or had access to some of the submitted information. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See ORD 551 at 4-5.* Thus, if the opposing party has seen or had access to

information relating to litigation, through discovery or otherwise, then there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Therefore, to the extent that the opposing party in the anticipated litigation has seen or had access to the submitted information, any such information is not protected by section 552.103 and may not be withheld on that basis. With the exception of such information, the district may withhold the submitted information at this time under section 552.103 of the Government Code. We note that the applicability of section 552.103 ends once the related litigation concludes or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Karen E. Stack  
Assistant Attorney General  
Open Records Division

KES/dls

Ref: ID# 338533

Enc. Submitted documents

c: Requestor  
(w/o enclosures)