



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 30, 2010

Ms. Maria E. Miller  
Legal Department  
Dallas County Community College District  
1601 South Lamar, Suite 208  
Dallas, Texas 75215-1816

OR2010-11479

Dear Ms. Miller:

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# 388663.

The Dallas County Community College District (the "district") received a request for the Request and Justification for Reclassification, acceptance letter, recommendation letter, application, and resume of a named district employee. 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.

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 claiming this exception bears the burden of providing relevant facts and documents to demonstrate the applicability of the exception. 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 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. *See* Open Records Decision Nos. 555 (1990), 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined 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). Further, the fact a potential opposing party has hired an attorney who makes a request for information does not establish litigation is reasonably anticipated. *See* Open Records Decision No. 361 (1983).

You inform us, and have provided documentation, that prior to the district's receipt of the present request, the district received a demand letter from an attorney representing the requestor. In the demand letter, the requestor's attorney alleges the district has violated the Civil Rights Act and the Texas Labor Code by discriminating against the requestor based on gender. The letter offers to waive the requestor's claims against the district if the district pays the requestor back pay and immediately adjusts her salary. Further, the letter states that the requestor wishes to attempt to negotiate this resolution of her claims with the district prior to filing suit. Upon review, we agree that the district reasonably anticipated litigation when it received the present request. We further conclude that the submitted information is related to the anticipated litigation for the purposes of section 552.103(a). Therefore, the district may withhold the submitted information under section 552.103 of the Government Code.

We note, however, that once the information at issue has been obtained by all parties to the anticipated litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any information at issue that has either been obtained from or provided to all opposing parties in the anticipated litigation is not excepted from disclosure under section 552.103(a)

and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded or is no longer anticipated. *See* Attorney General Opinion MW-575 (1982); *see also* 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, toll free at (888) 672-6787.

Sincerely,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 388663

Enc. Submitted documents

c: Requestor  
(w/o enclosures)