



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 24, 2011

Mr. Andrew B. Thompson
Assistant General Counsel
Corpus Christi Independent School District
P.O. Box 110
Corpus Christi, Texas 78403-0110

OR2011-09062

Dear Mr. Thompson:

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# 422433.

The Corpus Christi Independent School District (the "district") received a request for incident and accident reports related to a specified incident and the names of construction contractors and landscape companies for Gloria Hicks Elementary School. You claim 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, in relevant 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 has the burden of providing relevant facts and documents to show the section 552.103(a) exception applies in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the requested information is related to that litigation. *See 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 parts of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

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 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"). This office has concluded a governmental body's receipt of a claim letter it represents to be in compliance with the notice requirements of the Texas Tort Claims Act ("TTCA"), chapter 101 of the Civil Practice and Remedies Code, is sufficient to establish litigation is reasonably anticipated. *See* Open Records Decision No. 638 at 4 (1996). If that representation is not made, the receipt of a claim letter is a factor we will consider in determining, from the totality of the circumstances represented, whether the governmental body has established litigation is reasonably anticipated. *Id.*

You assert the district reasonably anticipated litigation on the date of the request because prior to that date the district received a Notice of Claim from an attorney representing the requestor, which you have submitted for our review. However, you do not affirmatively represent to this office that the letter is in compliance with the TTCA. We also note the letter does not specify any damages or contain a threat to sue. In addition, you have not demonstrated that any party had taken any other concrete steps toward initiating litigation as of the date of the request. Therefore, we find you have failed to demonstrate the district reasonably anticipated litigation on the date the request for information was received. Accordingly, the district may not withhold any of the responsive information under section 552.103. As you raise no additional exceptions against disclosure, the submitted information must be released.

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, 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 422433

Enc. Submitted documents

c: Requestor
(w/o enclosures)