



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2012

Mr. Orlando Juarez, Jr.
Counsel for the United Independent ISD
Escamilla, Poneck & Cruz, LLP
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2012-12456

Dear Mr. Juarez:

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# 461757.

The United Independent School District (the "district"), which you represent, received a request for (1) all documents from the district's Risk Management department from the date of a specified incident to the present, (2) all documents regarding the requestor's termination, (3) all write-ups and disciplinary forms regarding the requestor for the past year, and (4) information regarding the requestor's drug test screening. You state you have released some of the requested information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.103 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 at issue. 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, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st 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 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)*. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See 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.¹ *See Open Records Decision No. 555 (1990); see also 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)*. 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 state the district reasonably anticipates litigation because the requestor, a former employee, has requested all the documents regarding himself from the district's Risk Management department and all documents pertaining to his termination. You further state the requestor has a history of filing administrative grievances, and, therefore, it is reasonable to assume that if the requestor exhausts his administrative remedies he will file a civil suit. However, you do not inform our office that, at the time of the request, the requestor had

¹In addition, this office has concluded 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)*.

taken any concrete steps toward the initiation of litigation regarding this matter. Consequently, you have failed to demonstrate the district reasonably anticipated litigation when it received the present request for information. As such, we conclude the district may not withhold any of the information at issue under section 552.103 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c). *See* Gov’t Code § 552.137(a)-(c). Section 552.137 is not applicable to the work e-mail address of an employee of a governmental body because such an address is not that of the employee as a “member of the public” but is instead the address of the individual as a government employee. Further, section 552.137 is not applicable to an e-mail address provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor’s agent. *See id.* § 552.137(c)(1). Because we are unable to discern whether the e-mail address you have marked falls within the scope of section 552.137(c), we must rule conditionally. To the extent the e-mail address you have marked belongs to a member of the public, the district must withhold the e-mail address under section 552.137, unless the owner affirmatively consents to its public disclosure.² *See id.* § 552.137(b). However, to the extent the marked e-mail address belongs to an agent of a company with a contractual relationship with the district, the e-mail address may not be withheld under section 552.137 of the Government Code.

In summary, to the extent the marked e-mail address belongs to a member of the public, the district must withhold the e-mail address under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The remaining information must be released to the requestor.³

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.

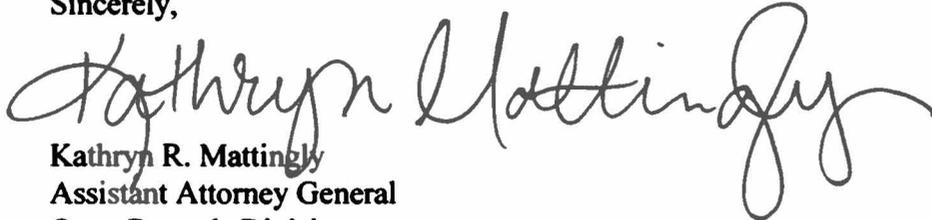
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free,

²We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

³We note because the information to be released may be confidential with respect to the general public, if the district receives another request for this information from a different requestor, the district must again seek a ruling from this office.

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,

A handwritten signature in cursive script that reads "Kathryn R. Mattingly". The signature is written in dark ink and is positioned above the typed name.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 461757

Enc. Submitted documents

c: Requestor
(w/o enclosures)