



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 28, 2017

Mr. Miles LeBlanc
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2017-29228

Dear Mr. LeBlanc:

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# 689805 (File No. HPM100517).

The Houston Independent School District (the "district") received a request for information pertaining to a named individual. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the present request because it was created after the date of the present request. This ruling does not address the public availability of the non-responsive information, which we have indicated, and the district need not release it in response to this request.

Section 552.103 provides, in part, as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the

¹Although you raise section 552.101 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this exception applies to the submitted information. See Gov't Code §§ 552.301, .302.

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 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, orig. proceeding); *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 from disclosure under section 552.103(a).

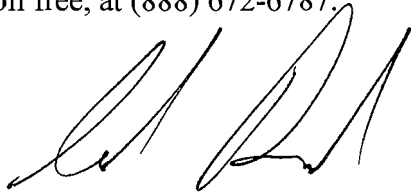
Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* This office has found a pending complaint with the Equal Opportunity Employment Commission ("EEOC") indicates litigation is reasonably anticipated. *See* Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982), 281 at 1 (1981).

You state, and provide documentation showing, the named individual filed a discrimination claim against the district with the EEOC. Additionally, you state, and provide documentation showing, the district received a litigation hold letter from an attorney representing the named individual. However, we note the EEOC complaint was not filed until October 9, 2017, and the litigation hold letter was sent to the district on October 13, 2017, both after the date the district received the instant request for information. Consequently, we find you have not established the district reasonably anticipated litigation when it received the request for information. Accordingly, the district may not withhold the submitted responsive information under section 552.103 of the Government Code. As no further exceptions to disclosure have been raised, the district must release the submitted responsive information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'SMP', is written over the word 'Sincerely,'.

Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/gw

Ref: ID# 689805

Enc. Submitted documents

c: Requestor
(w/o enclosures)