



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 13, 1995

Ms. JoAnn S. Wright
School Attorney
Arlington Independent School District
1203 West Pioneer Parkway
Arlington, Texas 76013-6246

OR95-611

Dear Ms. Wright:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33770.

The Arlington Independent School District (the "district") received a request from a teacher for the following information:

1. Items added to [the teacher's] personnel files
2. Items added to administrative files kept [about the teacher]
3. Notes kept by administrators on meetings with [the teacher]
4. Notes kept by administrators on meetings about [the teacher]
5. Correspondence between administrators and [the teacher]

Some of the information apparently has already been provided to the requestor. You contend, however, that some documents responsive to the request are excepted from disclosure pursuant to section 552.103(a) of the Government Code. You have submitted the documents at issue to this office for review.

Section 552.102(a) of the Government Code provides, in part, that

information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter.

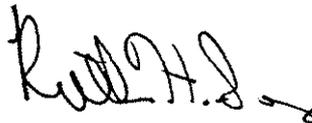
In Open Records Decision No. 288 (1981) at 4, this office determined that the above-cited provision does not entitle an employee of a governmental entity to information that could be withheld from the general public under section 552.103(a). Thus, the right of access under section 552.102(a) does not give public employees a special right of access that would override the section 552.103(a) exception to disclosure.

To secure the protection of section 552.103(a), the district must demonstrate that (1) litigation is pending or reasonably anticipated and that (2) the information at issue is related to that litigation. *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 (1990) at 4. You indicate that the teacher who has requested the records has filed a complaint against the district with the Equal Employment Opportunity Commission (“EEOC”), alleging discrimination on the basis of disability and retaliation due to a prior complaint of discrimination on the basis of disability. This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated and therefore meets the first prong of the section 552.103(a) test. Open Records Decision Nos. 386 (1983) at 2, 336 (1982) at 1. Our review of the documents at issue indicates that the documents are related to the subject of the litigation. Since the district has met its burden of showing that the requested information is related to reasonably anticipated litigation, the documents at issue may be withheld from disclosure under section 552.103(a).¹

In making this determination, we assume that the opposing party in the anticipated litigation has not had access to any of the documents at issue. Once information has been obtained by all of the parties to litigation, no section 552.103(a) generally interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. The applicability of section 552.103(a) also generally ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

¹Since the information at issue may be withheld under section 552.103(a), we do not at this time need to address your other arguments against release.

RHS/rho

Ref.: ID# 33770

Enclosures: Submitted documents

cc: Ms. Donna Korman
(w/o enclosures)