



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 5, 1997

Mr. Richard M. Abernathy
Abernathy, Roeder, Robertson & Joplin
P.O. Box 1210
McKinney, Texas 75069-1210

OR97-0266

Dear Mr. Abernathy:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. You represent Plano Independent School District (the "district"), which received two requests for information. These requests were assigned ID#s 103395 and 103370.

One of the requestors asked for a complete copy of his own personnel file and any other records concerning him that might be held by the district. The other requestor sought all records, wherever held, relating to his former employment with the district. You assert that records responsive to these requests are related to a pending lawsuit and thus are excepted from disclosure pursuant to section 552.103(a). You submitted to this office for review representative samples of the documents at issue.¹

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the 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 provided this office information showing that litigation is pending. We reviewed the representative sample of records and agree that they are related to the pending litigation. We note, however, that some of the documents at issue have been seen by the opposing parties to the litigation. Once all parties to the litigation have had access

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

to documents, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). You may withhold the records at issue that the opposing parties to the anticipated litigation have not seen or had access to. The applicability of section 552.103(a) also ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID#s 103395, 103370

Enclosures: Submitted documents

cc: Mr. Kevin A. Blake
(w/o enclosures)

Mr. Jack Lindsey
(w/o enclosures)