



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 31, 1997

Mr. T. Chris Robson  
Henslee, Fowler & Hepworth  
800 Frost Bank Plaza  
816 Congress Avenue  
Austin, Texas 78701-2443

OR97-0654

Dear Mr. Robson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 104783.

The Ennis Independent School District (the "district"), which you represent, received a request for the personnel file of a former employee. You claim that all of the requested information is excepted from disclosure under section 552.103 of the Government Code. Alternatively, you claim that the documents are excepted from disclosure pursuant to sections 552.101, 552.102(b), 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note, initially, that some of the information at issue has been made public and may not be withheld from disclosure to the requestor. Gov't Code § 552.007 (information that is made public may not be selectively withheld from disclosure).

Next, to show that section 552.103 is applicable, the district must demonstrate that 1) litigation is pending or reasonably anticipated, and 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. Section 552.103 requires concrete evidence that litigation may ensue. Open Records Decision No. 452 (1986) at 4.

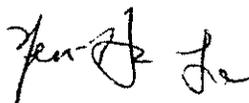
You inform us that the district is "currently involved in litigation regarding the proposed termination of one of its employees" in a case styled, *Ennis ISD v. Marcus Smith*, Docket No. 012-LH-1096. You further assert that the subject of the requested information has been named by Mr. Smith as a potential witness in the case. We conclude that the requested information relates to the pending litigation. Therefore, you may withhold the requested information pursuant to section 552.103.

We note, however, that generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103, and it must be disclosed. Moreover, the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because we are able to make a determination under section 552.103, we do not address your other arguments against disclosure. However, some of the requested information may be confidential and may not be released even after the litigation has concluded. *See, e.g.*, Gov't Code § 552.101; Gov't Code § 552.117; Open Records Decision Nos. 600 (1992) (personal financial information), 611 (1992) (common-law privacy). *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). If the district receives a subsequent request for the information at issue, you should re-assert your arguments against disclosure.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/rho

Ref.: ID# 104783

Enclosures: Submitted documents

cc: Ms. Meridith Schucker  
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(w/o enclosures)