



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 6, 1998

Mr. David Méndez
Bickerstaff, Heath, Smiley,
Pollan, Kever & McDaniel, L.L.P.
1700 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701-2443

OR98-0636

Dear Mr. Méndez:

You ask 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# 113948.

The Austin Independent School District (the "district"), which you represent, received two related requests for information regarding district teachers who have been assaulted. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, 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; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The governmental body has the burden of providing relevant facts and documents to show that 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, 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. The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

In this instance, you explain that the district is currently involved in pending litigation, *Friar v. Moses*, Cause No. 97-13999 (206th Judicial District, Travis County, Texas). You have provided this office with a copy of the petition in that case. After reviewing the submitted materials, we conclude that litigation is pending and that the requested information reasonably relates to the litigation. The district may, therefore, withhold the requested information under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) 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 pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/glg

Ref.: ID# 113948

Enclosures: Submitted documents

cc: Mr. Herbert Friar III
P.O. Box 926
Manchaca, Texas 78652
(w/o enclosures)