



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 19, 1998

Ms. Stacy C. Ferguson
Schulman, Walheim & Heidelberg, Inc.
112 East Pecan, Suite 3000
San Antonio, Texas 78205-1528

OR98-1256

Dear Ms. Ferguson:

On behalf of the San Antonio Independent School District (the "school district"), you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115812.

The school district received a request for information pertaining to a particular on-the-job injury. You assert that the requested information is excepted from required public disclosure based on sections 552.101, 552.103 and 552.111 of the Government Code.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is 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.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception

in a particular situation. The test for establishing that section 552.103 applies is a two-prong 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

You inform us that a benefit review conference has been scheduled concerning the school district's denial of a compensation claim. *See* Labor Code ch. 410, subch. B. You assert that the requested information relates to this conference. For purposes of section 552.103, a contested case under the Administrative Procedure Act ("APA"), Government Code chapter 2001, constitutes litigation. *See* Open Records Decision No. 588 (1991). A benefit review conference is a nonadversarial, informal dispute resolution proceeding designed to mediate and resolve disputed issues by agreement of the parties. *See* Labor Code § 410.021(3). Section 410.003 of the Labor Code states that, unless otherwise provided by chapter 410, the APA does not apply to a proceeding under chapter 410. We find no indication in chapter 410 that a benefit review conference is a contested case under the APA. We therefore conclude that the conference does not constitute litigation for purposes of section 552.103 of the Government Code. Consequently, the school district may not withhold the requested information from the requestor based on section 552.103.

You raise section 552.111 in regard to portions of the information. Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.* We have reviewed the information and conclude that section 552.111 is inapplicable.

Section 552.101 excepts from disclosure information that is made confidential by law, either constitutional, statutory, or by judicial decision. You assert that the documents are excepted from disclosure under Texas Rule of Civil Procedure 166b, as party communications. This office has stated that discovery privileges are not covered under the predecessor provision of section 552.101, since information is privileged only to the extent that the court in a particular case deems it to be so. *Open Records Decision No. 575 (1990)*. Thus, the school district may not withhold the information based on the raised discovery privilege.

We are resolving this matter with this 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 may 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 115812

Enclosures: Submitted documents

cc: Mr. Amparo Ricondo
215 West Broadview, # 2005
San Antonio, Texas 78228
(w/o enclosures)