



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 21, 1998

Mr. Michael Currie  
Henslee, Fowler & Hepworth  
800 Frost Bank Plaza  
816 Congress Avenue  
Austin, Texas 78701-2443

OR98-2256

Dear Mr. Currie:

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# 118224.

The Joaquin Independent School District (the "district"), which you represent, received a request for the minutes of any school board meeting within the last five years. In subsequent communications with your office, the requestor has indicated that she only seeks the minutes from meetings that are open to the public. 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 representative sample of documents.<sup>1</sup>

Section 552.103(a) excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The department 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 department must meet both prongs of this test for information to be excepted under section 552.103(a).

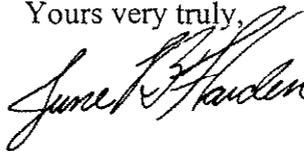
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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986). After reviewing your arguments, we conclude that you have not demonstrated that litigation is reasonably anticipated. We also note that minutes are the recordation of the transaction of official business, and are the very sort of materials that were intended to be made public by the Open Records Act. Open Records Decision Nos. 225 (1979), 221 (1979); 91 (1975); 60 (1974). Consequently, the district must release the requested information.

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,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref.: ID# 118224

Enclosures: Submitted documents

cc: Mr. Lynn Tran  
Texas Civil Rights Project  
2212 E. MLK Boulevard  
Austin, Texas 78702-1344  
(w/o enclosures)