



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 16, 1998

Ms. Rebecca Zuniga
Escamilla & Ponec, Inc.
1200 South Texas Building
603 Navarro Street
San Antonio, Texas 78205-1826

OR98-2717

Dear Ms. Zuniga:

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# 119856.

The Eagle Pass Independent School District (the "district") received a request for

[1] the names of the parents or gaurdians (sic) who had uniform waivers approved and those who had uniform waivers denied [2] the uniform waivers which were approved and those which were denied [3] a complete transcript of the recording of the Eagle Pass ISD School Board Meeting in which the waivers for the uniform were denied or approved by the School Board, or a copy of the recording of this meeting, or the opportunity to make a copy of this recording.

You claim that the requested information is excepted from disclosure under sections 552.103 and 552.114 of the Government Code. You state that the requested information is directly related to litigation with the district, *Esparza, et al. v. Board of Trustees of the Eagle Pass Indep. Sch. Dist., et al.* (W.D. Tex.). You do not furnish to this office a copy of the petition. You state that plaintiffs are challenging the district's denial of their uniform waiver requests.

We have considered the exception you claim and have reviewed the documents at issue. The school district may not withhold from public disclosure a recording of an open meeting conducted pursuant to the Open Meetings Act, chapter 551 of the Government Code.¹ Gov't Code § 551.022. Although you have established that the recording of the board meeting is related to pending litigation as required by section 552.103(a) of the Government Code, the recording must be disclosed. This office held under the Texas Open Records Act, art. 6252 17a Vernon's Texas Civil Statutes, the predecessor to Government Code Chapter 552, that the recording of a meetings of a school board falls into that category of documents that must be made available to the public.

It is clear that official records of the public proceedings of a governmental body are among the most open of records, and this office has specifically held minutes of a school board to be public under the Open Records Act. Open Records Decision Nos. 91 (1975); 60 (1974). . . . We doubt that the section 3(a)(3) exception [the litigation exception] could ever be applied to except these records.

Open Record Decision No. 221 at 1 (1979). *See also* Open Records Decision 551 at 2 (1990). You must release the recording of the August 12, 1998 meeting of the school board.

As for the other requested information, a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation when asserting section 552.103(a).² Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation to which the governmental body is a party is either pending or reasonably anticipated, and that (2) the requested information relates to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); Open Records Decision

¹In a letter dated August 27, 1998, Mr. Leonel Galaviz, superintendent of schools, offered to the requestor to copy the tape recording of the meeting of the school board in which the uniform waivers were discussed.

²Section 552.103(a) excepts from required public 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

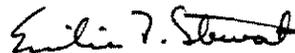
(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

No. 551 at 4 (1990). In this instance, the Eagle Pass Independent School District has met its burden of showing that the litigation is reasonably anticipated and that the requested information relates to that litigation. Therefore, at this time, you may withhold the names of the parents or guardians who received rulings on uniform waiver requests and copies of the approved and denied requests.³ In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that 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).

Having decided that portions of the requested information are exempt under section 103(a), it is not necessary to address your contention that the same information is also exempt under section 552.114.⁴

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,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS/nc

Ref.: ID# 119856

³We note that the requestor disputes that there is no document that satisfies the first item of his request. This office cannot resolve questions of fact. Where fact issues cannot be resolved as a matter of law or ascertained from the face of documents submitted to us, we rely on the representations of the governmental body requesting our opinion. Open Records Decision No. 552 (1990).

⁴The term "student record" in section 552.114 of the Government Code generally has been considered the equivalent of "education records" in the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. The district may withhold from disclosure information that is protected by FERPA without the necessity of requesting a decision from this office. Open Records Decision No. 634 (1995).

Enclosures: Submitted documents

cc: Mr. Chapman Traylor
P.O. Box 144
Quemado, TX 78877
(w/o enclosures)