



March 3, 1999

Mr. M. B. Donaldson
Superintendent of Schools
Aldine Independent School District
14910 Aldine-Westfield Road
Houston, Texas 77032-3099

OR99-0614

Dear Mr. Donaldson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122484.

The Aldine Independent School District (the “district”) received a request for information related to soft-drink vending machine contracts. You have submitted a representative sample of the responsive information.¹ You assert that the responsive information is excepted from disclosure by section 552.103 of the Government Code. We have considered the exception you raise and the submitted information.

Section 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 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 establish this exception a governmental body must show (1) litigation is pending or is reasonably anticipated, and (2) the information at issue is related to that litigation. Open Records Decision No 551 at 4 (1990).

The mere chance of litigation will not establish the litigation exception. Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the

¹We 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.

governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* This office has previously concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

In the present case, you have received a letter from an attorney which asserts demands and threatens litigation in the event that those demands are not met. We conclude that you have demonstrated that litigation in this matter is reasonably anticipated. From our review of the submitted documents, we further conclude that this information relates to that anticipated litigation. The information responsive to this request is therefore subject to the exception to disclosure afforded under section 552.103 of the government Code.

We note, however, that much of the submitted information has evidently been made available to the potential adverse party in this anticipated litigation. Absent special circumstances, once information has been obtained by an adverse party to the litigation 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). In conclusion, pursuant to Government Code section 552.103, you may withhold all of the responsive information that the potentially adverse party has not had the opportunity to inspect.

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

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref.: ID# 122484

Enclosures: Submitted documents

cc: Mr. Timothy Perkins
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Dallas, Texas 75240
(w/o enclosures)