



August 10, 1999

Ms. Lisa A. Brown  
Bracewell and Patterson, L.L.P.  
South Tower Pennzoil Place  
711 Louisiana Street, Suite 2900  
Houston, Texas 77002-2781

OR99-2250

Dear Ms. Brown:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127651.

The Houston Community College System (the "college"), which you represent, received requests for information on certain job vacancies at the college, including information on candidates who applied for the jobs. 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 information.<sup>1</sup>

When asserting section 552.103, a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation. 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 to which an officer or employee of the state or

---

<sup>1</sup>In reaching our conclusion here, 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.

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.

Gov't Code § 552.103.

Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation is either pending or reasonably anticipated, and (2) the requested information relates to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *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 at 4 (1990).

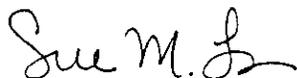
To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

In this instance, you explain that the college is currently involved in litigation. You have provided this office with the original petition in the case. After reviewing the submitted material, we find that you have shown that litigation is pending. We also conclude that the representative sample of records you provided is related to the pending litigation. Thus, you may withhold the requested information under section 552.103.

Furthermore, we assume that the opposing party to the pending 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). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). 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).

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,

A handwritten signature in black ink that reads "Sue M. Lee". The signature is written in a cursive, flowing style.

Sue M. Lee  
Assistant Attorney General  
Open Records Division

SML\nc

Ref: ID# 127651

encl: Submitted documents

cc: Mr. Booker T. Harlan  
8419 Riverside Walk  
Houston, Texas 77064  
(w/o enclosures)