



September 9, 1999

Ms. Sharon E. McLaughlin
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
The Meridian Building
1425 Greenway Drive, Suite 580
Irving, Texas 75038

OR99-2511

Dear Ms. McLaughlin:

On behalf of the Marlin Independent School District (MISD), you ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 127325.

MISD received a request for the following information:

1) All financial records from the trip of Marlin School Board Members, MISD Employees, and their guests to San Francisco including but not limited to transportation, hotel bills, meals, and a copy of a canceled check for registration to the conference; 2) The damage estimate received from the insurance company following the October leak in the Administration building; 3) A copy of any checks or deposits from the insurance company to MISD to show how much was paid out on the claim from the October damages to the Marlin ISD Administration Building; and 4) Records of how much MISD has paid out to Robert Aguilar and/or American Eagle contractors since Sept 1, 1998 and a list of what the payments [sic] for.

You state that MISD “has produced all records pertaining to the San Francisco trip to the requestor.” You contend that the remaining information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *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). The governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

You explain that

[i]n October 1998, the Administration Building received substantial flood damage. As a result of that damage, the insurance company for the District estimated damages and made payments thereon. American Eagle Construction contracted with the District to provide restoration consultation on the damaged facility. The Falls County Grand Jury is currently conducting an investigation into the entire transaction or series of transactions arising out of the damage and repairs to the Administration Building.

You inform us that documents at issue are within the scope of a Grand Jury subpoena. You have submitted a letter from the Falls County District Attorney which states that the documents at issue relate to the Grand Jury investigation and reasonably anticipated criminal litigation and, therefore, should be withheld from disclosure under section 552.103(a). We agree that section 552.103(a) applies to the documents at issue. Therefore, MISD may withhold the documents from disclosure under section 552.103(a) on behalf of the Falls County District Attorney.¹

Because we are able to resolve this matter under section 552.103, we do not address your additional arguments against disclosure. 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

¹In reaching this conclusion however, we assume that neither the defendant nor his attorney has previously had access to the information at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, 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).

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

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 127325

Encl. Submitted documents

cc: Ms. Wendy Saltzman
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(w/o enclosures)