Office of the Attorney General · State of Texas
John Cornyn

December 14, 2001

Mr. Don Underwood
Walsh, Anderson, Brown, Schulze & Aldridge, PC
P.O. Box 168046
Irving, Texas 75016-8046

OR2001-5856

Dear Mr. Underwood:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156231.

The Burleson Independent School District (the "district"), which you represent, received a request for twenty-one categories of information related to the construction, rehabilitation, alteration, or repair of Stribling Elementary School. 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 sample of information.[1] We have also considered the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comment).

Section 552.103 states in pertinent part:

> (a) Information is excepted from the requirements of Section 552.021 if it is information relating to litigation of a civil or criminal nature 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.

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[1]We assume that the "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.

. . . .

> (c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103. A governmental body has the burden of providing relevant facts and documents to show the applicability of section 552.103 in a particular situation. The test for establishing that section 552.103(a) applies is a showing that (1) litigation is pending or reasonably anticipated on the date that the governmental body receives the request, 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991).

You inform us that two clients of the requestor, retired schoolteachers with the district, are involved in litigation regarding the construction of Stribling Elementary School as of the date the district received the request for information. You further inform us that the teachers have filed suit against a general contractor and a plumbing subcontractor working for the district. In support of your assertion, you have submitted copies of various petitions in the case of *D'Maris Ann Irwin and Debra Bigler v. Huber Hunt & Nichols, Inc, Skihi Enterprises, Inc., SHW Group, Inc. and Group Affiliates, Inc.* cause number C2000-00116, pending in the District Court of Johnson County, Texas, 18th Judicial District.

You acknowledge that the district has not been made a party to the lawsuit, and you furnish no additional evidence to show that you reasonably anticipate being made a party. Further, the suit alleges that the defendants' negligence in connection with the sewer system installed in the newly constructed school caused the plaintiff teachers' illnesses or injuries. The requestor, who is representing the plaintiffs, argues that the district is a subscriber to Workers Compensation coverage, and under section 408.001 of the Labor Code, recovery of workers' compensation benefits is the exclusive remedy of an employee covered by workers' compensation benefits against the employer for a work-related injury. *See* Labor Code § 408.001. The requestor states his belief that the district is thus sheltered from liability in this matter and cannot be made a party to the litigation. Based on the totality of the above information, we conclude that you have not met your burden of showing that the district reasonably anticipates being a party to litigation under section 552.103 of the Government Code. Therefore, you must release the requested information in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

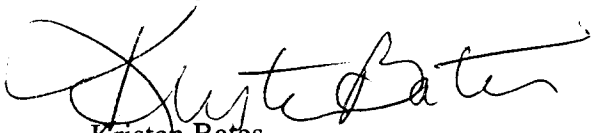
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 156231

Enc. Submitted documents

c: Mr. Jack Friedman
Friedman & Franks, PC
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(w/o enclosures)