



August 20, 2002

Ms. Dorcas A. Green
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2002-4620

Dear Ms. Green:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167387.

The Clifton Independent School District (the "school district"), which you represent, received a request for "all insurance policies that have been in effect during the year 2002." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We begin by finding that some of the information at issue is subject to section 552.022. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law. The information which we have marked fits into the subsection (3) category for "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body." Section 552.103, which serves to protect a governmental body's position in litigation, is a discretionary exception and does not provide a compelling reason to overcome the presumption of openness. *See* Open Records Decision Nos. 551 (1990) (section 552.103 does not itself make information confidential), 522 at 4 (1989) (discretionary exceptions in general). However, we will consider whether other law makes the information confidential.

You argue that information concerning insurance is protected from disclosure under section 101.104 of the Texas Civil Practice and Remedies Code, which provides as follows:

(a) Neither the existence nor the amount of insurance held by a governmental unit is admissible in the trial of a suit under [the Texas Tort Claims Act].

(b) Neither the existence nor the amount of the insurance is subject to discovery.

Tex. Civ. Prac. & Rem. Code § 101.104; see *In re Sabine Valley Center*, 986 S.W.2d 612 (Tex. 1999) (statute “prohibits discovery of insurance covering claims against a governmental unit and against its employees for which it could be liable, directly or vicariously, under the [Texas Tort Claims] Act”). We believe this discovery provision applies to the marked section 552.022 information. Furthermore, section 101.104 of the Texas Civil Practice and Remedies Code consists of other law for purposes of section 552.022(a) of the Government Code. See *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Therefore, we conclude that the school district must withhold from the requestor the information which we have marked pursuant to section 101.104 of the Texas Civil Practice and Remedies Code.

Next, we consider your claim under section 552.103 for the remaining information. Section 552.103 provides as follows:

(a) Information is excepted from [required public disclosure] 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.

....

(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), (c). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception 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 received the request for information, 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).

Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the school district must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989). Whether litigation is reasonably anticipated must be determined on a

case-by-case basis. Open Records Decision No. 452 at 4 (1986). Among other examples, this office has concluded that litigation was reasonably anticipated where the opposing party took the following objective steps toward litigation: (1) filed a complaint with the Equal Employment Opportunity Commission ("EEOC"), *see* Open Records Decision No. 336 (1982); (2) 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); and (3) threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981). A governmental body may also establish that litigation is reasonably anticipated by the receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990).

You have submitted a copy of a notice of claim dated April 26, 2002 received by the school district from an attorney representing the requestor in connection with an incident involving the requestor. The letter alleges that the requestor suffered injuries caused by the school district's negligence. The letter also states that the requestor and the attorney will need to obtain information regarding insurance coverage that would cover the requestor's medical expenses if the school district wishes to engage in settlement negotiations prior to litigation. Based on our review of your arguments and the submitted information, we conclude that litigation was reasonably anticipated on June 11, 2002, the date the school district received the request for information, and that the submitted documents relate to the anticipated litigation for purposes of section 552.103(a). *Texas Legal Found.*, 958 S.W.2d at 483.

Thus, you may withhold the submitted information from the requestor under section 552.103. However, we note that if the opposing party in the litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, you must withhold the information we have marked under section 101.104 of the Texas Civil Practice and Remedies Code in conjunction with section 552.022(a) of the Government Code. You may withhold the remaining requested information at this time under section 552.103.

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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# 167387

Enc. Submitted documents

c: Ms. Penny Vannatta
P.O. Box 351
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(w/o enclosures)