



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 30, 2008

Mr. Ricardo R. Lopez
Feldman & Rogers, L.L.P
517 Soledad Street
San Antonio, Texas 78205-1508

OR2008-14824

Dear Mr. Lopez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 326495.

The North East Independent School District (the "school district") received two requests for information. The first request is for final 2007-2008 fiscal year printouts showing the fiscal year income, expense and net income total for several organization codes. The second request is for time card printouts for several named employees in the Community Education Department for a certain time period. 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 information.

We begin by finding that portions of the information at issue are subject to section 552.022(a)(3). Section 552.022 (a)(3) provides as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

....

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The information, in part, includes information in an account relating to the receipt or expenditure of public or other funds by a governmental body. This information is expressly public under section 552.022(a)(3) unless it is confidential under other law. Although you claim this information is excepted from public disclosure under section 552.103, this section is a discretionary exception to disclosure and therefore not other law that makes information expressly confidential for purposes of section 552.022(a). See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (stating that governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (litigation exception does not implicate third-party rights and may be waived by governmental body); see also Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the school district may not withhold the information that is subject to section 552.022(a)(3), which we have marked, under section 552.103.

We turn now to your section 552.103 claim 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.

The school district has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing 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, 481 (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 school district must meet both prongs of this test for information to be excepted under section 552.103(a).

You argue that the requested information is related to pending litigation filed in the United States District Court for the Western District of Texas in which the school district is a party, *Mzyk v. North East Indep. Sch. Dist.*, Cause No. SA-08-CA-0344-FB. You state that this case was filed April 24, 2008. You further state that the plaintiff in this case seeks monetary

damages against the school district and complains of discrimination and retaliation in her work in the school district's Community Education Department. You submitted to this office a copy of the complaint in this case in which the plaintiff brings an action under Title VII of the Civil Rights Act of 1964¹, the Age Discrimination in Employment Act² and the Americans with Disabilities Act.³

After review of the information at issue and consideration of your arguments, we conclude that the school district has established that the information relates to pending litigation. Accordingly, we conclude that the school district may withhold the information from the requestor based on section 552.103. In reaching this conclusion, however, we assume that the opposing parties to the litigation have not 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 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 ends once the litigation or likelihood thereof has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, with the exception of the information we have marked as subject to required public release under section 552.022(a)(3), the school district may withhold the information at issue from the requestor based on section 552.103 of the Government Code.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

¹See 42 U.S.C. §§ 2000e, *et seq.*

²See 29 U.S.C. §§ 621, *et seq.*

³See 42 U.S.C. §§ 12102, *et seq.*

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. 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 Office of the Attorney General 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/jh

Ref: ID# 326495

Enc: Submitted documents

c: Mr. Leslie Mzyk
3014 Renker
San Antonio, Texas 78217
(w/o enclosures)