



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2009

Mr. Justin Graham
Abernathy, Roeder, Boyd & Joplin, P.C.
Attorney for Lovejoy Independent School District
P. O. Box 1210
McKinney, Texas 75070-1210

OR2009-05581

Dear Mr. Graham:

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# 341175

The Lovejoy Independent School District (the "district"), which you represent, received a request for information pertaining to the requestors' child. You state that some of the submitted information has been redacted pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You also state the district has released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹ The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

²We note that although you raise section 552.102 of the Government Code as an exception to disclosure, you have not submitted any arguments regarding the applicability of this exception nor have you identified any information you seek to withhold under this exception. Therefore, we do not address the applicability of section 552.102 to the submitted information. See Gov't Code §§ 552.301, .302.

Section 552.103 of the Government Code provides in pertinent part 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 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). The governmental body 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. *Univ. of Tex. Law Sch. v. Tex. 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 governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You indicate, and the submitted documents support, that the district filed truancy complaints against the requestors in the Collin County Justice of the Peace Precinct 1, prior to the date the district received the request for information. You explain that the district is required to file truancy complaints pursuant to section 25.0951 of the Texas Education Code. *See* Edu. Code §§ 25.0951, .095. You indicate, and the submitted documents reflect, the submitted information is related to the truancy complaints because it pertains to the requestors' child. Based on your representations and the submitted documentation, we find that you have demonstrated that the district was a party to pending litigation when it received this request. We also find that the submitted information is related to the pending litigation. We therefore conclude that the district may generally withhold the submitted information under section 552.103.

We note, however, that the opposing party appears to have already seen or had access to some of the submitted information. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information that is related to litigation through discovery procedures. *See* ORD 551 at 4-5. If the opposing party has seen or had access to information that is related to litigation, through discovery or otherwise, then there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Therefore, the information that has either been obtained from

or provided to the opposing party is not excepted from disclosure under section 552.103(a). Further, the applicability of section 552.103(a) ends once the litigation has concluded or is no longer anticipated. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982). The district may not withhold any of the submitted information that the opposing parties have seen or had access to under section 552.103 of the Government Code. Accordingly, to the extent the opposing parties have not seen or had access to the submitted information, the district may withhold it under section 552.103. As our ruling is dispositive, we do not address your remaining claim against disclosure.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eb

Ref: ID# 341175

Enc. Submitted documents

c: Requestor
(w/o enclosures)