



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 25, 2009

Ms. Andrea Slater Gulley  
Underwood Law Firm  
P.O. Box 9158  
Amarillo, Texas 79105-9158

OR2009-11958

Dear Ms. Gully:

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# 353463.

The Pampa Independent School District (the "district"), which you represent, received a request for information pertaining to the posting notices of Board of Trustee meetings and board meeting preparation services. You claim that the submitted 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.<sup>1</sup> We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

The requestor contends, among other things, that the district did not comply with section 552.301 of the Government Code in requesting this decision. Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(a), (b). Section 552.301(e)(1)(c) states that the governmental body requesting a ruling must "submit

---

<sup>1</sup>To the extent any additional responsive information existed on the date the district received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

to the attorney general... a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date[.]” *Id.* § 552.301(e)(1)(c).

The requestor contends the district “made up evidence with unsigned notations stating that the request was in essence dated 6/11/09 as it was received after 5 P.M. on 6/10/09.” However, the district does not assert it received the request on June 11, 2009. The district states, and provides sufficient evidence showing, it received the request for information on June 10, 2009. The district requested a ruling from our office on June 23, 2009. Accordingly, we find the district complied with section 552.301 in requesting this decision, and we will consider its claim under section 552.103.

Next, we note that some of the submitted information is subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

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[.]

*Id.* § 552.022(a)(3). Upon review, the submitted information contains an executed subscription agreement relating to the expenditure of public funds, which we have marked, that is subject to section 552.022(a)(3) of the Government Code. Therefore, the district may only withhold this information if it is confidential under “other law.” Although you raise section 552.103 of the Government Code, this section is a discretionary exception to disclosure that protects the governmental body’s interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 is not “other law” that makes information confidential for the purposes of section 552.022. Therefore, the district may not withhold the information that is subject to section 552.022 under section 552.103. As you raise no further arguments against the disclosure of the information we have marked under section 552.022(a)(3), it must be released.

Next, we address your argument that the information not subject to section 552.022 is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 provides:

(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). The 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 was pending or reasonably anticipated on the date the governmental body received the request, 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 district must meet both prongs of this test for information to be excepted under section 552.103(a).

You inform us, and provide documentation showing that, prior to the district's receipt of the present request for information, the district was named as a defendant in a lawsuit styled *Rebecca Terrell and Chandrashekar Thanedar v. Pampa Independent School District*, cause number 35,621. You state that the requestor is one of the plaintiffs in this pending litigation. We therefore agree that litigation was pending on the date the district received the request. Furthermore, having reviewed your arguments and representations, we find that the information at issue is related to the pending proceedings for purposes of section 552.103. Accordingly, the district may generally withhold the information not subject to section 552.022 pursuant to section 552.103.

However, once the information at issue has been obtained by all parties to the anticipated litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. See Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any submitted information that has either been obtained from or provided to all other parties in the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. See Attorney General Opinion MW-575 (1982); see also Open Records Decision No. 350 (1982). Therefore, with the exception of the information subject to section 552.022,

which must be released, the district may withhold the remaining information under section 552.103.

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](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,



Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/eeg

Ref: ID# 353463

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)