



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 12, 2010

Ms. Christine Badillo
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P.O. Box 2156
Austin, Texas 78768

OR2010-00585

Dear Ms. Badillo:

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# 367052.

The Glen Rose Independent School District (the "district"), which you represent, received a request for district e-mails during specified time periods and containing certain terms.¹ You appear to have redacted student information from the submitted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of Title 20 of the United States Code.² You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.111, 552.136, and 552.137 of the

¹We note the district asked for and received clarification regarding this request. See Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); see also Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

²The 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 FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

Government Code and privileged under rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rules of Civil Procedure.³ We have considered the exceptions you claim and reviewed the submitted representative sample of information.⁴

Initially, we note that one of the submitted e-mails, which we have marked, is not responsive as it does not fall within the dates specified by the requestor. The district need not release non-responsive information in response to this request, and this ruling will not address that information.

Section 552.103 of the Government Code 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). A governmental body has the burden of providing relevant facts and documents to show 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 for information, 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

³You raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503; however, this office has concluded that section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Further, although you raise the attorney-client privilege under rule 503, we note that section 552.107 of the Government Code is the proper exception to raise for your attorney-client claim in this instance. See ORD 676. We also note that you have not submitted arguments in support of rule 192.5; therefore we presume you have withdrawn this exception.

⁴We assume that the "representative 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.

n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

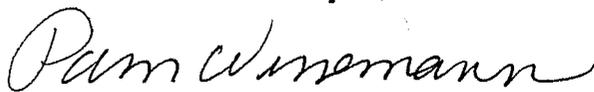
You state, and provide documentation showing, that prior to the receipt of the instant request, the requestor filed a lawsuit against the district, which is currently on appeal. You further state that the submitted information relates to the litigation. Based on your representations and our review, we find the information at issue is related to the pending litigation for the purposes of section 552.103. We therefore conclude the district may withhold the submitted information under section 552.103 of the Government Code.⁵

We note, however, that once the information at issue has been obtained by all parties to the pending 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 information that has either been obtained from or provided to all opposing 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).

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, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

⁵As our ruling is dispositive, we do not address your remaining arguments against disclosure.

Ref: ID# 367052

Enc. Submitted documents

c: Requestor
(w/o enclosures)