



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 16, 2010

Ms. Karla Schultz
Walsh, Anderson, Brown, Aldridge & Gallegos, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2010-02235

Dear Ms. Schultz:

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# 370304.

The Navasota Independent School District (the "district"), which you represent, received a request for: 1) a copy of the pay scale for district employees for a specified time period, and 2) all documentation regarding the requestor's work history, medical information, personal information, academic achievements, and job evaluations. You claim 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.

Section 552.103 of the Government Code provides in pertinent part:

(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 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 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 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). See ORD 551 at 4.

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 *Mary Mable v. Navasota Independent School District*, cause number 4:09-CV-00123, which was filed in the United States District Court for the Southern District of Texas, Houston Division. Based on your representations and our review, we conclude litigation was pending when the district received the request for information. You also state the pay scales in Exhibit 7 relate to the litigation because the requestor alleges in her lawsuit that she was discriminated against in the form of unequal pay. Based on your representations and our review, we agree Exhibit 7 is related to the litigation for purposes of section 552.103. Therefore Exhibit 7 may be withheld under section 552.103.¹ You also seek to withhold the requestor's personnel file, Exhibit 8, under section 552.103. You state, however, the requestor's personnel file has previously been released to her in response to prior open records requests. Once information has been obtained by all opposing parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Therefore, Exhibit 8 is not excepted under section 552.103 and must be released.²

¹We note the applicability of section 552.103 ends once the related litigation concludes. See Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2 (1982).

²We note you have redacted the requestor's home address, home telephone number, social security number, family information, bank account number, and bank routing number in Exhibit 8. Generally, this type of information is excepted pursuant to sections 552.117 and 552.136 of the Government Code. The purpose of sections 552.117 and 552.136 is to protect the privacy interests of individuals. Privacy theories, however, are not implicated when individuals request information concerning themselves. Accordingly, with the exception of information pertaining to students of the district other than the requestor that you have marked under the Family Educational Rights and Privacy Act, Exhibit 8 must be released in its entirety.

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 370304

Enc. Submitted documents

c: Requestor
(w/o enclosures)