



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 26, 2011

Mr. William M. Buechler  
Buechler & Associates, P.C.  
For Flour Bluff Independent School District  
3660 Stoneridge Road, Suite D-101  
Austin, Texas 78746

OR2011-07489

Dear Mr. Buechler:

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# 418789.

The Flour Bluff Independent School District (the "district"), which you represent, received a request for 1) five categories of information pertaining to non-curricular student organizations; 2) three categories of information pertaining to a specified request to form a Gay-Straight Alliance organization; and 3) two categories of information pertaining to reports of bullying and harassment at Flour Bluff High School during specified school years. You state the district does not have information pertaining to a portion of the request.<sup>1</sup> You claim that the submitted information is excepted from disclosure under section 552.103 of

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted information.<sup>3</sup>

We first note that the requestor, in his request, agreed to the redaction of all student-identifying information from the responsive information. Accordingly, student identifying information is not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the district is not required to release the non-responsive information in response to the request. We will, however, address your argument against the disclosure of the remaining information.

Next, we note that Exhibit C contains information made expressly public under section 552.022 of the Government Code. Section 552.022 provides, in relevant part, 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:

...

(15) information regarded as open to the public under an agency's policies[.]

Gov't Code § 552.022(a)(15). Upon review, Exhibit C includes the district's student/parent handbook which has been distributed to the public and is, therefore, subject to section 552.022(a)(15) of the Government Code. Although you raise section 552.103 of the Government Code, that 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

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<sup>2</sup>We note that the district initially raised sections 552.101, 552.111, and 552.114 of the Government Code but has since withdrawn its claims under those sections. Accordingly, we do not address those exceptions.

<sup>3</sup>We 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.

the student/parent handbook in Exhibit C under section 552.103 of the Government Code. As you raise no further exceptions to its disclosure, the student/parent handbook must be released.

You seek to withhold the remaining information under section 552.103 of the Government Code, which provides in 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). 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 (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 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.

Whether litigation is reasonably anticipated must be determined on a case-by-case basis. See Open Records Decision No. 452 at 4 (1986). To establish litigation is reasonably anticipated, a governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture."<sup>4</sup> *Id.* Concrete evidence to support

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<sup>4</sup>Among other examples, this office has concluded litigation was reasonably anticipated where the opposing party took the following objective steps toward litigation: (1) filed a complaint with the Equal Employment Opportunity Commission, see Open Records Decision No. 336 (1982); (2) hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, see Open Records Decision No. 346 (1982); and (3) threatened to sue on several occasions and hired an attorney, see Open Records Decision No. 288 (1981).

a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. *See* Open Records Decision No. 555 (1990); *see also* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982).

You argue litigation is reasonably anticipated in this instance because the request, which is from an attorney, includes a demand on behalf of a student that the district allow the formation of a gay-straight student organization and a threat of legal action. The request states the district's actions in denying the student's request to form the organization violate federal law and "require[s] the [d]istrict to take immediate steps to remedy the situation and avoid legal action." The request concludes if the district refuses to comply, the requestor's organization "will take whatever steps necessary to protect the rights of [its] client." Furthermore, you provide a local newspaper article from the date of the request stating the requestor's organization has threatened legal action. You explain that the remaining information is related to the requestor's claims against the district. Based on your representations and our review, we find that you have established the remaining information is related to litigation that the district reasonably anticipated on the date of its receipt of this request for information. We, therefore, conclude that the district may withhold the remaining information under section 552.103 of the Government Code.

Generally, however, once information has been obtained by all parties to the anticipated litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the anticipated 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 been concluded or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

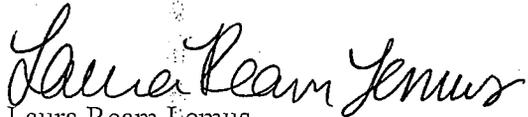
In summary, the student/parent handbook subject to section 552.022(a)(15) of the Government Code must be released. The remaining information may be withheld under section 552.103 of the Government Code.

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

Sincerely,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/em

Ref: ID# 418789

Enc. Submitted documents

c: Requestor  
(w/o enclosures)