



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 21, 2011

Ms. Christine Badillo
For San Marcos Consolidated Independent School District
Walsh, Anderson, Brown, Gallegos and Green, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2011-08785

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# 421441.

The San Marcos Consolidated Independent School District (the "district"), which you represent, received a request for all self-evaluations conducted by the district pursuant to the Americans with Disabilities Act. You claim the submitted information is excepted from disclosure pursuant to 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:

- (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 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 of the receipt of the request for information and (2) the information at issue is related to the pending or anticipated 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 state, and have provided documentation showing, a lawsuit styled *R.C. v. San Marcos Consolidated Independent School District*, Cause No. A09CA 649LY, was filed in the United States District Court for the Western District of Texas prior to the district's receipt of the request. Based on your representations and our review, we determine litigation was pending on the date the district received the request for information. You state the requested information is related to the pending litigation because it pertains to the issues that help form the basis of the litigation. Based on your representations and our review, we find the submitted information is related to the pending litigation for the purposes of section 552.103. Accordingly, the district may withhold the submitted information under section 552.103 of the Government Code.

We note once information has been obtained by all 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). Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); 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,

A handwritten signature in cursive script, appearing to read "Jennifer Burnett".

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 421441

Enc. Submitted documents

c: Requestor
(w/o enclosures)