



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2011

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

OR2011-08869

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# 421335.

The Georgetown Independent School District (the "district"), which you represent, received two different requests from the same requestor for (1) all "Self-Evaluations" pertaining to the Americans With Disabilities Act conducted by the district and (2) all documents regarding evacuation procedures at Georgetown High School for students with disabilities that affect their mobility. You claim the submitted evaluation and emergency situation 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. We have also received and considered comments submitted by a representative of the requestor's law firm. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we note portions of the submitted information are subject to section 552.022 of the Government Code, which states, in relevant part:

- (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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; [and]

...

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

Gov't Code § 552.022(a)(1), (15). Exhibit 2 contains a completed evaluation and completed reports made of or for the district. Thus, the district must release the evaluation and reports pursuant to section 552.022(a)(1), unless the information either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. Exhibit 4 contains district policies that are published on the district's website; thus, we find the district regards those policies as open to the public. Therefore, the district must release the policies pursuant to section 552.022(a)(15), unless the policies are expressly confidential under other law. You claim the completed evaluation and reports in Exhibit 2 and the published policies in Exhibit 4, all of which we have marked, are excepted under section 552.103 of the Government Code. This section, however, is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *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); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential). As such, it is not other law that makes information confidential for the purposes of section 552.022. Consequently, the district may not withhold the marked completed evaluation and reports in Exhibit 2 or the marked published policies in Exhibit 4 under section 552.103 of the Government Code. As you have not claimed any other exceptions to disclosure for the information we have marked in Exhibits 2 and 4, the district must release the marked information. We will, however, consider your claim under section 552.103 for the remaining information, which is not subject to section 552.022.

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 (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). 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, the district received the requests for information after a lawsuit styled *Luke and Mendy Degelia ex rel. v. Georgetown Indep. Sch. Dist.*, Case No. 1:10-cv-00717-LY, was filed by the requestor in the United States District Court for the Western District of Texas, Austin Division. Based on your representation and our review, we conclude litigation involving the district was pending when the district received the requests. You also state the submitted information is related to the pending litigation because it pertains to the issues that help form the basis of the lawsuit. Based on your representations and our review, we find the remaining information is related to the pending litigation for purposes of section 552.103. Therefore, we conclude the district may withhold the remaining information under section 552.103 of the Government Code.

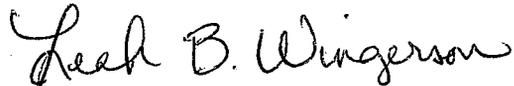
We note, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the 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).

In summary, the district must release the marked evaluation and reports in Exhibit 2 and the marked policies in Exhibit 4 pursuant to section 552.022 of the Government Code. The district may withhold the remaining information 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, 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 that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 421335

Enc. Submitted documents

c: Requestor
(w/o enclosures)