



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2011

Mr. Miguel A. Saldana
Counsel for the La Villa Independent School District
Walsh, Anderson, Brown, Gallegos & Green, P.C.
6521 North 10th Street, Suite C
McAllen, Texas 78504

OR2011-09670

Dear Mr. Saldana:

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# 423047.

The La Villa Independent School District (the "district"), which you represent, received a request for thirty-two categories of information regarding the requestor's client. You state the information responsive to thirty-one categories of the request either does not exist or has been released to the requestor.¹ You claim the information responsive to the remaining category of the request, which you have submitted, is excepted from disclosure under sections 552.101, 552.102, and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides, in part, as follows:

- (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

¹The 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).

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 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 district must meet both prongs of this test for information to be excepted under 552.103(a).

The submitted information consists of a contract non-renewal notice letter, with attached supporting documents. You inform this office the district has “tentatively settled the proposed non-renewal of [the subject individual's contract] subject to final negotiations and execution of a compromise release and settlement agreement.” You claim that because the district is in negotiations with the individual who is the subject of the letter, disclosure of this information at this time “could jeopardize finalization of the agreement and protract the current administrative litigation.” However, you do not provide any arguments explaining how the settlement negotiations the district is engaged in constitute litigation for purposes of section 552.103. You also do not explain how the information at issue is otherwise related to any pending or anticipated litigation to which the district is a party. Consequently, the district failed to explain the applicability of the litigation exception to the submitted information, and no information may be withheld on the basis of section 552.103 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. In this instance, you do not cite to any specific law, and we are not aware of any, that makes the submitted information confidential under section 552.101. *See id.* § 552.101. Therefore, the district may not withhold any portion of the submitted information under section 552.101 of the Government Code.

You also raise section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly

unwarranted invasion of personal privacy[.]” *Id.* § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Upon review, the submitted information does not contain dates of birth. Consequently, the district may not withhold any submitted information under section 552.102(a) of the Government Code. Section 552.102(b) excepts from disclosure all information from transcripts of professional public school employees other than the employee’s name, the courses taken, and the degree obtained. Gov’t Code § 552.102(b); Open Records Decision No. 526 (1989). Because the submitted information does not include a transcript from an institution of higher education, section 552.102(b) is inapplicable and no information may be withheld on that basis. As you raise no other exceptions to disclosure, the submitted information 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/eb

Ref: ID# 423047

Enc. Submitted documents

c: Requestor
(w/o enclosures)

