



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 11, 2012

Ms. Jennifer M. Covington
Attorney for Tarrant County College District
Law, Snakard & Gambill, P.C.
777 Main Street, Suite 3500
Fort Worth, Texas 76102

OR2012-07027

Dear Ms. Covington:

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# 453335.

The Tarrant County College District (the "district"), which you represent, received two requests from the same requestor for (1) the "Entry Earnings and Salary Schedule Ranges and Employment Procedures" for 2010-2011 and 2011-2012, (2) a list of all positions on the administrative, professional, and technical chart, the salary of those employees, and all stipends given or promised to those employees during a specified time period, and (3) the description of a specified position. You state you have released some information to the requestor. You claim the remaining requested 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.

Initially, we note the district did not submit the requested "Entry Earnings and Salary Schedule Ranges and Employment Procedures" for 2011-2012. Thus, to the extent such information existed and was maintained by the district on the date the district received the request for information, we presume the district has released it. If not, the district must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

We next note portions of the submitted information fall within the scope of section 552.022(a)(2) of the Government Code, which provides the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body are expressly public under section 552.022 of the Government Code and may not be withheld unless it is made confidential under the Act or other law. *See* Gov't Code § 552.022(a)(2). In this instance, the name, salary, and title information at issue in the submitted information

is subject to section 552.022(a)(2) of the Government Code. Although you assert the submitted information is excepted from disclosure under section 552.103 of the Government Code, that exception is discretionary and does not make information confidential under the Act. *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 Gov't Code § 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold the name, salary, and title information under section 552.103 of the Government Code. Accordingly, the district must release this information.

Next, we address your argument under section 552.103 for the information not subject to section 552.022 of the Government Code. 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 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 that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See* Open Records Decision No. 551 at 4 (1990).

You claim the remaining information pertains to pending litigation. You state, and have provided documentation showing, a lawsuit styled *Dr. David Eason v. Tarrant County College District*, Cause No. 348-249935-10, was filed in the 348th district court of Tarrant County before the district's receipt of the present requests for information. Based on your representations and our review, we determine the litigation was pending on the date the district received the requests for information. You state the information at issue relates to issues raised in the pending litigation. Based on your representations and our review, we find

the remaining information is related to the pending litigation for the purposes of section 552.103. Accordingly, the district may withhold the remaining information under section 552.103 of the Government Code.

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). Further, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the district must release the submitted name, salary, and title information pursuant to section 552.022(a)(2) 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 453335

Enc. Submitted documents

c: Requestor
(w/o enclosures)