



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2012

Mr. Clyde A. Pine, Jr.
Counsel for the El Paso Independent School District
Mounce, Green, Myers, Safe, Paxson & Galatza
P.O. Box 1977
El Paso, Texas 79999-1977

OR2012-18125

Dear Mr. Pine:

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# 470635.

The El Paso Independent School District (the "district"), which you represent, received a request for all documents and communications regarding a named individual at the district, including all contracts, fee bills, payments, and communications with another named individual. You state the district is releasing some of the requested information. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code, and privileged under rule 503 of the Texas Rules of Evidence.¹ We have considered your arguments and reviewed the submitted representative sample of information.²

¹Although you also raise section 552.101 of the Government Code in conjunction with section 552.107 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). We also note section 552.101 does not encompass Texas Disciplinary Rule of Professional Conduct 1.05. Accordingly, we do not address your argument under section 552.101.

²We assume 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 those records contain substantially different types of information than that submitted to this office.

Initially, we note the requestor is a Texas State Representative. Section 552.008 of the Government Code grants access to requested information, including confidential information, to individual members, agencies, or committees of the Texas Legislature. Section 552.008 provides as follows:

(a) Th[e Act] does not grant authority to withhold information from individual members, agencies, or committees of the legislature to use for legislative purposes.

(b) A governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including confidential information, to the requesting member, agency, or committee for inspection or duplication in accordance with this chapter if the requesting member, agency, or committee states that the public information is requested under this chapter for legislative purposes. A governmental body, by providing public information under this section that is confidential or otherwise excepted from required disclosure under law, does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information in the future. The governmental body may require the requesting individual member of the legislature, the requesting legislative agency or committee, or the members or employees of the requesting entity who will view or handle information that is received under this section and that is confidential under law to sign a confidentiality agreement that covers the information and requires that:

(1) the information not be disclosed outside the requesting entity, or within the requesting entity for purposes other than the purpose for which it was received;

(2) the information be labeled as confidential;

(3) the information be kept securely; or

(4) the number of copies made of the information or the notes taken from the information that implicate the confidential nature of the information be controlled, with all copies or notes that are not destroyed or returned to the governmental body remaining confidential and subject to the confidentiality agreement.

...

(c) This section does not affect:

- (1) the right of an individual member, agency, or committee of the legislature to obtain information from a governmental body under other law, including under the rules of either house of the legislature;
- (2) the procedures under which the information is obtained under other law; or
- (3) the use that may be made of the information obtained under other law.

Gov't Code § 552.008(a)-(b), (c). In this instance, the requestor is Texas State Representative Marisa Marquez. Representative Marquez does not state, however, and it is not otherwise clear to this office, her request was made for legislative purposes. Accordingly, we must rule on the applicability of section 552.008 in the alternative. If Representative Marquez made this request for legislative purposes, then the district must make the submitted information available to her in accordance with section 552.008 of the Government Code. *See id.* § 552.008(b). We note section 552.008 permits a governmental body to require a member of the legislature to sign a confidentiality agreement for the protection of information obtained pursuant to this section. *Id.* In addition, release of this information to Representative Marquez under section 552.008 does not waive or affect the confidentiality of the information for the purposes of state or federal law or waive the district's right to assert exceptions to required public disclosure of this information to future requestors. *See id.* But if this request for information was not made for legislative purposes, then the requested information need not be released to Representative Marquez under section 552.008, and we will consider your arguments against its public disclosure.

Next, we note the submitted information was the subject of previous requests for information, in response to which this office issued Open Records Letter No. 2012-15423 (2012). We have no indication that the law, facts, or circumstances on which this prior ruling was based have changed. Accordingly, we conclude the district must continue to rely on this ruling as a previous determination and withhold or release the submitted information in accordance with Open Records Letter No. 2012-15423. *See* Open Records Decision No. 673 at 6-7 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

In summary, to the extent the submitted information is being requested under section 552.008(b), the district must make such information available to the requestor in accordance with that section. Otherwise, the district must withhold or release the submitted information in accordance with Open Records Letter No. 2012-15423.

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,

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 470635

Enc. Submitted documents

c: Requestor
(w/o enclosures)