



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2013

Mr. Jaime J. Muñoz
Counsel for the La Joya Independent School District
Law Office of Jaime J. Muñoz
P.O. Box 47
San Juan, Texas 78589

OR2013-07101

Dear Mr. Muñoz:

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# 485737.

The La Joya Independent School District (the "district"), which you represent, received a request for any settlement agreements related to a specified case, as well as records of any payments made by the district to the plaintiffs in the specified case as part of the settlement agreement. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, as follows:

- (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 unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(18) a settlement agreement to which a governmental body is a party.

Gov't Code § 552.022(a)(3), (18). The information we have marked consists of information relating to the expenditure of public funds subject to subsection 552.022(a)(3) of the Government Code and a settlement agreement, to which the district is a party, subject to subsection 552.022(a)(18) of the Government Code. You seek to withhold this information under section 552.103 of the Government Code. However, this section is a discretionary exception 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). Thus, the district may not withhold the information subject to section 552.022 under section 552.103. You raise section 552.101 of the Government Code for the information subject to section 552.022, and we note a portion of the information at issue is subject to section 552.136 of the Government Code.¹ Because each of these sections make information confidential under the Act, we will address the applicability of sections 552.101 and 552.136 to the information at issue. We will also address your arguments against disclosure of the information not subject to section 552.022 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. This exception encompasses information that other statutes make confidential, such as section 154.073 of the Civil Practice and Remedies Code, which provides in relevant part that

a communication relating to the subject matter of any civil or criminal dispute made by a participant in an alternative dispute resolution procedure, whether before or after the institution of formal judicial proceedings, is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

Civ. Prac. & Rem. Code § 154.073(a). In Open Records Decision No. 658 (1998), this office found that communications during the formal settlement process were intended to be

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

confidential. *See* ORD 658 at 4. You contend the submitted information is confidential under section 154.073. We note a portion of the submitted information constitutes a final settlement agreement. Section 154.073 of the Civil Practice and Remedies Code does not except from required public disclosure a governmental body's mediated final settlement agreement. *See id.* § 154.073(d). Thus, the submitted settlement agreement is not confidential under section 154.073 of the Civil Practice and Remedies Code. Further, we note section 154.073 pertains to communications made during an actual alternative dispute resolution procedure. You do not explain the remaining information was made during such a procedure. Accordingly, the district may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 154.073 of the Civil Practice and Remedies Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Prior decisions of this office have found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy but there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). Upon review, we find none of the submitted information is highly intimate or embarrassing information of no legitimate public interest, and it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 of the Government Code states “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the district must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code.

We now address your arguments under section 552.103 of the Government Code for the information not subject to section 552.022 of the Government Code. Section 552.103 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.

Id. § 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 state the information at issue relates to “litigation of a civil nature.” However, the submitted information reflects the district settled the claims at issue prior to the date the district received the present request for information. Thus, we determine litigation was neither pending nor reasonably anticipated on the date the district received the request for information. Therefore, the district may not withhold any of the submitted information under section 552.103 of the Government Code.

In summary, the district must withhold the information we have marked under section 552.136 of the Government Code. The district must release the remaining information.

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 "Jennifer Burnett". The signature is written in black ink and is positioned to the left of the typed name.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 485737

Enc. Submitted documents

c: Requestor
(w/o enclosures)