



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 23, 2013

Ms. Katheryne R. MarDock  
Assistant General Counsel  
Public Information Office-Legal Services  
Houston Independent School District  
4400 West 18<sup>th</sup> Street  
Houston, Texas 77092-8501

OR2013-08604

Dear Ms. MarDock:

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# 488294.

The Houston Independent School District (the "district") received a request for information pertaining to a specified lawsuit, including (1) the name of a specified law firm, (2) the cost of defending a named individual, (3) any agreements between the district and the named individual, (4) information provided to a specified insurance company and the insurance company's response, and (5) correspondences between specified law firms and the district. You state you have released information responsive to items one and two of the request. You inform us the district has no information responsive to item three.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>We 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 that those records contain substantially different types of information than that submitted to this office.

Section 552.103 of the Government Code provides in relevant 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). The purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See id.* § 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing that (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). ORD 551 at 4.

You state, and provide documentation showing, a lawsuit styled *The Gil Ramirez Group, L.L.C. v. Houston Independent School District*, Case No. 4:10-CV-04872, was filed against the district in the United States District Court for the Southern District of Texas, Houston Division, prior to the district's receipt of the request for information. As such, litigation was pending against the district at the time of the request. You explain the submitted information consists of correspondence between the district's general counsel and its insurer and e-mails between the district's general counsel, legal staff, and an outside law firm hired to represent the district concerning the lawsuit at issue. Based on your representations and our review, we find the information at issue is related to the pending litigation. Accordingly, the district may withhold the submitted information under section 552.103 of the Government Code.<sup>3</sup>

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending 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 been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

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](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,



Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/bhf

Ref: ID# 488294

Enc. Submitted documents

c: Requestor  
(w/o enclosures)