



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 12, 2013

Ms. Christine Badillo
Counsel for Leander Independent School District
Walsh, Anderson, Gallegos, Green & Treviño, P.C.
P.O. Box 2156
Austin, Texas 78768-2156

OR2013-09891

Dear Ms. Badillo:

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# 490352 (PIR Nos. 658, 659, 660, 661, 662, 663, and 664).

The Leander Independent School District (the "district"), which you represent, received several requests for specified records, including various e-mail correspondence, policy records, and training documentation. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note portions of the submitted information are subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(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:

...

¹We assume that 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.

(15) information regarded as open to the public under an agency's policies[.]

...

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(15),(16). Exhibit 3 consists of attorney fee bills that are subject to subsection 552.022(a)(16). Exhibits 4, 5, and 6 contain curriculum information and pages from the district's Board Policy Manual, which the district makes available on its website. Accordingly, we find the documents we have marked in Exhibits 4, 5, and 6 are regarded as open to the public under the district's policies and are therefore subject to section 552.022(a)(15). This information must be released unless it is made confidential under the Act or other law. *See id.* You seek to withhold the information in Exhibits 3, 4, 5, and 6 that is subject to section 552.022 under section 552.103 of the Government Code. However, section 552.103 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); *see also* ORDs 665 at 2 n.5, 663 at 5. Therefore, Exhibit 3 and the information we have marked in Exhibits 4, 5, and 6 may not be withheld under section 552.103 of the Government Code. Accordingly, the district must release the information subject to section 552.022 in its entirety.

We will now consider your claim under section 552.103 of the Government Code for the submitted information that is not subject to section 552.022. Section 552.103 provides, in relevant part:

(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 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 district 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, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); ORD 551 at 4. The district must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, that prior to the district's receipt of the requests for information, the requestor filed a lawsuit against the district. Based on your representations and our review of the submitted information, we agree litigation was pending on the date the district received the request. You also state the remaining information pertains to the allegations of the lawsuit regarding the educational services provided by the district to the requestor's child. Upon review, we find the information we have marked pertains to the pending litigation, and it may generally be withheld under section 552.103. However, we find you have failed to demonstrate how the remaining information you seek to withhold under 552.103, which consists of general and administrative e-mail correspondence that does not relate to the lawsuit allegations and does not otherwise pertain to the requestor's child, is related to the pending litigation. Consequently, the district may not withhold any of the remaining information at issue under section 552.103 of the Government Code.

We note the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* ORD 551 at 4-5. Thus, if the opposing party has seen or had access to information relating to litigation, through discovery or otherwise, then there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We note much of the remaining information consists of e-mails and letters sent to or from the requestor. Thus, the opposing party in the anticipated litigation has seen or had access to that information. Therefore, to the extent that the requestor has seen or had access to the remaining information, such information is not protected by section 552.103 and may not be withheld on that basis. Accordingly, the district may withhold only the information we have marked under section 552.103. We also note that the applicability of section 552.103 ends once the related litigation concludes or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We note some of the remaining information is subject to section 552.117 of the Government Code.² Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers,

²The 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).

and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, to the extent the employees at issue timely requested confidentiality under section 552.024, the district must withhold the information we have marked in the remaining information under section 552.117(a)(1) of the Government Code. If the employees did not make a timely election under section 552.024, the district may not withhold the information we have marked under section 552.117 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c). *See* Gov't Code § 552.137(a)-(c). The district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners affirmatively consent to their public disclosure.

In summary, the district must release Exhibit 3 and the information we marked in Exhibits 4, 5, and 6 pursuant to section 552.022 of the Government Code. The district may withhold the information we marked under section 552.103 of the Government Code. To the extent the employees at issue timely requested confidentiality under section 552.024, the district must withhold the information we have marked under section 552.117 of the Government Code. The district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their release. The remaining information must be released.³

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.

³We note the requestor has a right of access to her own personal e-mail address in the information that is being released. *See* Gov't Code § 552.137(b) (personal e-mail address of member of public may be disclosed if owner of address affirmatively consents to its disclosure). As previously noted, in relevant part, Open Records Decision No. 684 authorizes the board to withhold an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. Thus, if the district receives another request for this same information from a person who does not have such a right of access, Open Records Decision No. 684 authorizes the board to redact this requestor's personal e-mail address. *See* ORD 684.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 490352

Enc. Submitted documents

c: Requestor
(w/o enclosures)