



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 30, 2013

Mr. Todd A. Clark
Counsel for the Austin Independent School District
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2013-13118

Dear Mr. Clark:

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# 494760.

The Austin Independent School District (the "district"), which you represent, received a request for (1) the proposals submitted by the American Institutes for Research ("AIR"); Editure Professional Development ("Editure"); Johns Hopkins University ("Johns Hopkins"); and Turnaround Solutions, Inc. ("Turnaround") in response to the request for proposals ("RFP") for a partnering entity for Eastside Memorial High School and (2) any documents produced by members or co-chairs of the evaluation committee for this RFP in reviewing and scoring the proposals at issue, including score sheets and tabulations of individual proposers' scores. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code.¹ You also inform us the release of this information may implicate the proprietary interests of AIR, Editure, Johns Hopkins, and Turnaround. Accordingly, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on

¹We note that although you raise section 552.102 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim section 552.102 applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

interested third party to raise and explain applicability of exception in Act in certain circumstances). We have received comments from AIR, Editure, and Johns Hopkins. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have not submitted for our review any information responsive to the request for documents produced by members or co-chairs of the evaluation committee for this RFP in reviewing and scoring the proposals at issue, including score sheets and tabulations of individual proposers' scores. Thus, to the extent any information responsive to this portion of the request for existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.103 of the Government Code provides 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 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 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).

You state, and submit documentation demonstrating, that prior to the district's receipt of the request for information, a lawsuit styled *Steve Swanson v. Austin Independent School District*, Cause No. D-1-GN-13-001045, was filed and is currently pending in the Travis

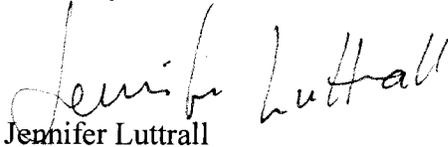
County District Court. You further state the submitted information is related to the pending litigation. Upon review of your arguments and the information at issue, we find the submitted information relates to litigation against the district that was pending when the district received this request for information. Accordingly, the district may withhold the submitted information under section 552.103 of the Government Code.

We note once information has been obtained by all parties to the pending 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 the opposing party in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); 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.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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 494760

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. David Alderslade
VP and Comptroller
Editure Professional Development
7352 Seventh Avenue, 12A
New York, New York 10001
(w/o enclosures)

Ms. Dona M. Kilpatrick
General Counsel and FOIA Officer
American Institutes for Research
1000 Thomas Jefferson Street, NW
Washington, DC 20007-3835
(w/o enclosures)

Ms. Rebecca Abelson
Assistant General Counsel
John Hopkins University
c/o Todd A. Clark
Counsel for the Austin Independent School District
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
P.O. Box 2156
Austin, Texas 78768
(w/o enclosures)

Turnaround Solutions, Inc.
4600 Touchton Road
Jacksonville, Florida 32246
(w/o enclosures)