



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2013

Ms. Amy M. Emerson
Counsel for the Sandy Land Underground Water Conservation District
Lloyd Gosselink
816 Congress Avenue, Suite 1900
Austin, Texas 78701

OR2013-18632

Dear Ms. Emerson:

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# 504020.

The Sandy Land Underground Water Conservation District (the "district"), which you represent, received a request for board minutes, financial reports, specified communications, and information regarding contracts with international entities for specified periods of time. You claim the requested information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, you indicate some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2013-16576 (2013) and 2013-17451 (2013). In Open Records Letter No. 2013-16576, we determined the district must release the meeting minutes and resolution we marked; with the exception of the information we marked under section 552.136 of the Government Code, must release the information subject to section 552.022 of the Government Code; and may withhold the remaining information under section 552.103 of the Government Code. In Open Records Letter No. 2013-17451, we relied on Open Records Letter No. 2013-16576

¹We 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.

as a previous determination, and further determined the district must release the information subject to section 552.022(a)(3) of the Government Code; and may withhold the remaining information under section 552.103 of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, to the extent the information responsive to this request is identical to the information previously requested and ruled upon by this office, we conclude the district must rely on Open Records Letter Nos. 2013-16576 and 2013-17451 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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). To the extent the submitted information is not subject to the prior rulings, we will address your arguments against its disclosure.

We note the submitted information includes minutes of meetings of the district's board of directors. Minutes of a governmental body's public meetings are specifically made public under provisions of the Open Meetings Act, chapter 551 of the Government Code. *See* Gov't Code §§ 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying on request to governmental body's chief administrative officer or officer's designee), .041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the meeting minutes we have marked in Exhibit J must be released.

Next, we note the remaining information in Exhibit J consists of a resolution adopted by the district's board of directors. Because laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure under the Act. *See* Open Records Decision No. 551 at 2-3 (1990) (laws or ordinances are open records). The submitted resolution is analogous to an ordinance. Moreover, the resolution appears to have been adopted at a public meeting of the board and thus is an official record of a governmental body's public proceedings. *See* Open Records Decision No. 221 at 1 (1979) ("official records of the public proceedings of a governmental body are among the most open of records"). Therefore, the district must release the resolution we have marked in Exhibit J.

Next, we note some of the remaining information is subject to section 552.022 of the Government Code. This section provides, in pertinent 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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

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

Gov't Code § 552.022(a)(1), (3). We note the information in Exhibit I consists of completed reports that are subject to subsection 552.022(a)(1). Furthermore, Exhibit G and the information we have marked in Exhibit K consist of contracts, account statements, and copies of checks, related to the receipt or expenditure of funds by the district. This information is subject to subsection 552.022(a)(3) of the Government Code. You argue this information is excepted from disclosure by section 552.103 of the Government Code. Section 552.103 is a discretionary exception to disclosure that protects a governmental body's interests 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 section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the district may not withhold this information under section 552.103 of the Government Code. We note portions of this information are subject to section 552.136 of the Government Code.² Because section 552.136 can make information confidential under the Act, we will address the applicability of this section to the information subject to section 552.022. Additionally, we will address your argument under section 552.103 and your remaining argument for the information not subject to section 552.022.

Section 552.136 of the Government Code provides, “[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”). Accordingly, the district must withhold the information we have marked under section 552.136 of the Government Code. As no further exceptions to disclosure have been raised for the remaining information subject to section 552.022, it must be released.

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).

We now address your arguments against disclosure of the remaining information not subject to section 552.022. Section 552.103 of the Government Code 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). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception applies 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 requested information is related to that litigation. *See 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 governmental body must meet both parts of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

You state, and submit documentation showing, a lawsuit was filed against the district prior to the date it received the present request for information. Based on your representation and our review, we find litigation was pending prior to the date the district received the present request for information. Further, you state, and we agree, the remaining information relates to the subject of the pending litigation. Accordingly, the district may withhold the remaining information under section 552.103 of the Government Code.³

We note, however, once the information at issue has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Further, the applicability of section 552.103(a) ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of a portion of this information.

In summary, the district must continue to rely on Open Records Letter Nos. 2013-16576 and 2013-17451 and withhold or release information in accordance with those rulings. The district must release the meeting minutes we have marked in Exhibit J pursuant to section 551.022 of the Government Code. The district must also release the resolution we have marked in Exhibit J. The district must also release the information we have marked under section 552.022 of the Government Code; however, in doing so, the district must withhold the information we have marked under section 552.136 of the Government Code. The remaining information may be withheld under section 552.103 of the Government Code.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 504020

Enc. Submitted documents

cc: Requestor
(w/o enclosures)