



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 3, 2016

Ms. Stephanie E. Maher
Counsel for the Lamar Consolidated Independent School District
Rogers, Morris & Grover, LLP
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2016-02634

Dear Ms. Maher:

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# 596641.

The Lamar Consolidated School District (the "district"), which you represent, received a request for all vendor bids for construction program management or program administrator services for a specified project. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. You state, and provide documentation showing, you notified Jacobs Project Management Company, Vanier Construction Management, Inc., Rice & Gardner Consultants, Inc., Heery International, Inc., Gilbane Building Company, JLL, Project Control of Texas, Inc., and AECOM of the request for information and of their rights 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 interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, you state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2015-21676 (2015). In that ruling, we determined the district may withhold the submitted information

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 that those records contain substantially different types of information than that submitted to this office.

under section 552.103(a) of the Government Code. We have no indication the law, facts, or circumstances upon which the prior ruling was based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon, the district must continue to rely on Open Records Letter No. 2015-21676 as a previous determination, and withhold or release the previously ruled upon information in accordance with it. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the current request is not encompassed by the prior ruling, we will consider the exception you raise.

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 governmental body has the burden of providing relevant facts and documents to show 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 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, 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.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

The district states, and provides documentation showing, a lawsuit styled *IDCUS, Inc., d/b/a IDC Inc. v. Lamar Consolidated Independent School District*, Cause No. 15-DCV-224983, was pending against the district in the 268th District Court of Fort Bend County, Texas, when the district received the request for information. Therefore, we agree litigation was

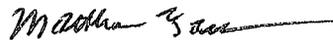
pending when the district received the request. We also find the district has established the submitted information is related to the pending litigation for purposes of section 552.103(a). Therefore, the district may withhold the submitted information under section 552.103(a) of the Government Code.²

In summary, to the extent the requested information is identical to the information previously ruled on by this office in Open Records Letter No. 2015-21676, the district may withhold the information in accordance with that ruling. To the extent the submitted information is not subject to the prior ruling, the district may withhold the submitted information under section 552.103(a) 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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MT/dls

Ref: ID# 596641

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

Mr. Alvaro Rizo-Patron
Vice President, Regional Manager
Jacobs Project Management
Company
5995 Rogerdale Road
Houston, Texas 77072
(w/o enclosures)

Mr. Jim Rice
President
Rice & Gardner Consultants, Inc.
6161 Savoy Drive, Suite 1212
Houston, Texas 77036
(w/o enclosures)

Mr. Randy Lowrance
Gilbane Building Company
1331 Lamar, Suite 1170
Houston, Texas 77010
(w/o enclosures)

Mr. Richard McNary
Project Control of Texas, Inc.
17300 Henderson Pass, Suite 100
San Antonio, Texas 78232
(w/o enclosures)

Ms. Gloria Sherek Barrera
Area Manager, Associate
Vanier Construction Management, Inc.
20333 State Highway 249, Suite 200
Houston, Texas 77070
(w/o enclosures)

Mr. David Waggoner
Heery International, Inc.
2929 Allen Parkway, Suite 200
Houston, Texas 77019
(w/o enclosures)

Mr. Edward Shoemake
Senior Vice President
JLL
1400 Post Oak Boulevard, Suite 1100
Houston, Texas 77056
(w/o enclosures)

Mr. Rigo Salinas
AECOM
5444 Westheimer Road, Suite 200
Houston, Texas 77056
(w/o enclosures)