



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 18, 2016

Ms. Katheryne Ellison
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2016-23349

Dear Ms. Ellison:

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# 630819 (HISD File No. Edwards E072816).

The Houston Independent School District (the "district") received a request for (1) a list of every teacher that requested a transfer for a specified school year, (2) a list of every teacher placed on a Prescriptive Plan for Assistance during a specified school year, and (3) a list of every teacher that had their Prescriptive Plan for Assistance extended during a specified school year. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we note the district has only submitted information related to categories two and three of requested information. The district has not submitted information responsive to the remaining category of requested information. We assume, to the extent any information responsive to the remaining category of requested information existed on the date the district received the request, the district has released it. If the district has not released any such information, it must do so at this time. *See id.* §§ 552.006, .301, .302; *see also* Open Records

Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, the district informs us the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-14991 (2016). In Open Records Letter No. 2016-14991, we determined the district may withhold the submitted information under section 552.103 of the Government Code. However, the district informs us the underlying Equal Employment Opportunity Commission (“EEOC”) investigation is now concluded. Therefore, we find the facts or circumstances on which Open Records Letter No. 2016-14991 was based have changed. Thus, the district may not rely on Open Records Letter No. 2016-14991 as a previous determination to withhold any of the information at issue. *See* Open Records Decision No. 673 at 6-7 (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 information is or is not excepted from disclosure). Accordingly, we will address the district’s arguments against disclosure of the submitted information.

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). 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* Open Records Decision No. 551 at 4-5 (1990). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception applies in a particular situation. The test for meeting this burden is a showing (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.

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* This office has found a pending complaint with the EEOC indicates litigation is reasonably anticipated. *See* Open Records Decisions Nos. 386 at 2 (1983), 336 at 1 (1982), 281 at 1 (1981).

You state, and provide documentation showing, prior to the district's receipt of the instant request for information, a former employee filed a discrimination complaint with the EEOC against the district. You inform us the EEOC issued a Dismissal and Notice of Rights letter dated July 14, 2016. You inform us the 90-day period to file suit has not expired. Based on these representations and our review, we find the district has demonstrated it reasonably anticipated litigation when it received the request for information. You contend the information in Exhibit 3 is related to the substance of the EEOC complaint. Upon review, we find the district anticipated litigation and has established the submitted information is related to the anticipated litigation for purposes of section 552.103(a). Accordingly, the district may withhold the information in Exhibit 3 under section 552.103 of the Government Code.¹

Generally, 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 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 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.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

¹As our ruling is dispositive, we need not address the district's remaining argument against disclosure.

information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Katelyn Blackburn-Rader". The signature is written in a cursive style with a large initial 'K'.

Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/bhf

Ref: ID# 630819

Enc. Submitted documents

c: Requestor