



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 24, 2016

Mr. Robert A. Schulman
Counsel for Harmony Public Schools
Schulman, Lopez, Hoffer & Adelstein, L.L.P
517 Soledad Street
San Antonio, Texas 78205-1508

OR2016-23763

Dear Mr. Schulman:

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# 631788.

Harmony Public Schools ("HPS"), which you represent, received five requests from the same requestors for the minutes of meetings of HPS's Board of Directors (the "board") and two specified HPS board committees over a specified time, a specified HPS policy, and specified types of information pertaining to independent contractors that have received over a certain amount of compensation from HPS during a specified time. You assert HPS is not required to comply with these requests. Alternatively, you claim the information at issue is excepted from disclosure under sections 552.103, 552.104, and 552.152 of the Government Code. We have considered the submitted arguments and reviewed the submitted information, some of which you state constitutes a representative sample.¹ We have also received and considered comments submitted by a representative of the requestors. *See* Gov't Code § 552.304

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.

(providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we address your claim HPS is not required to comply with the instant requests for information. You inform us the requestors are registered foreign agents for another country and the present requests for information are outside the scope of the requestors' federal Foreign Agent Registration Act ("FARA") registration filings. *See* 22 U.S.C. §§ 611 *et seq.* Accordingly, you assert the requests "[are] void for violation of FARA and [HPS] has no obligation to respond." However, this office has determined the Act does not permit the consideration by a governmental body or this office of a requestor's intended use of information when responding to open records requests. *See* Gov't Code §§ 552.222(a) (stating governmental body may not inquire into purpose for which information will be used), .223 (requiring uniform treatment of all open records requests); *see* Open Records Decision Nos. 508 (1988) at 2 (motives of a person seeking information under the Act are irrelevant), 51 (1974). Therefore, upon review, we find the present requests to be valid requests for information under the Act and HPS may only withhold the information at issue if it is excepted from disclosure under the Act or made confidential by law. Accordingly, we will address the arguments against disclosure for the submitted information.

Next, the requestors' representative notes, and we agree, Exhibit C consists of minutes from public meetings of the board, and Exhibits E and G consist of board committee meetings. The minutes of a governmental body's public meetings are specifically made public under provisions of the Open Meetings Act (the "OMA"), 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). Although you seek to withhold this information under sections 552.103, 552.104, and 552.152 of the Government Code, 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). Accordingly, HPS may not withhold information subject to section 551.022 under sections 552.103, 552.104, or 552.152. Upon review, we determine HPS must release Exhibit C pursuant to section 551.022 of the Government Code. However, we are unable to determine whether the committee meetings at issue in Exhibits E and G were conducted as open meetings pursuant to the OMA. Accordingly, we must rule conditionally. To the extent the meetings at issue in Exhibits E and G were conducted as open meetings in accordance with the OMA, HPS must release Exhibits E and G pursuant to section 551.022. To the extent the meetings at issue in Exhibits E and G were not conducted as open meetings in accordance with the OMA, we will address your arguments against disclosure of Exhibits E and G, as well as the remaining information, under sections 552.103 and 552.104 of the Government Code.

Section 552.103 of the Government Code provides, in part, the following:

(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 that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate 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 the pending or anticipated 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.); 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 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 demonstrate litigation is reasonably anticipated, the governmental body must provide this office "concrete evidence showing the claim that litigation may ensue is more than mere conjecture." *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.² Open Records Decision No. 555 (1990); *see also* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined if an individual publicly threatens to bring suit against a governmental body, but does not actually take

²In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982).

You assert HPS reasonably anticipated litigation when it received the present requests for information. You state, and provide information demonstrating, the requestors are attorneys for a law firm that is providing legal services to another country "relating to potential claims under treaty, [United States] law and/or international law . . . against individuals and/or entities in the United States." You state, and provide supporting documentation demonstrating, one of the requestors and another attorney from the same law firm have made threats in the media against HPS, alleging misappropriation of funds and criminal conspiracy. Further, you also inform us the requestors have filed complaints against HPS with the Texas Education Agency pursuant to section 39.057 of the Education Code. *See* Educ. Code § 39.057 (providing circumstances when commissioner of education may authorize special accreditation investigations to be conducted). Based on your representations, our review of the submitted information, and the totality of the circumstances, we find HPS has established it reasonably anticipated litigation at the time it received the instant requests. Furthermore, we find the information at issue is related to the anticipated litigation. Thus, HPS may withhold Exhibits I and K, as well as Exhibits E and G to the extent the meetings at issue were not conducted as open meetings in accordance with the OMA, under section 552.103 of the Government Code.³

However, once the information has been obtained by all parties to the anticipated litigation, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We also note the applicability of section 552.103 ends once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, HPS must release Exhibit C pursuant to section 551.022 of the Government Code. To the extent the meetings at issue in Exhibits E and G were conducted as open meetings pursuant to the OMA, then HPS must release the information at issue pursuant to section 551.022. HPS may withhold Exhibits I and K, as well as Exhibits E and G to the extent the meetings at issue were not conducted as open meetings in accordance with the OMA, 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.

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information

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

MHT/bhf

Ref: ID# 631788

Enc. Submitted documents

c: Requestors
(w/o enclosures)