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ATTORNEY GENERAL OF TEXAS

July 15, 2015

Ms. Lauren M. Wood
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P.O.Box 1210
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OR2015-14416

Dear Ms. Wood:

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# 571701.

The Plano Independent School District (the "district"), which you represent, received a request for certain information pertaining to any of three named individuals or to the "quiet room" at an elementary school.¹ The district claims the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have received comments from a representative of the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-11850 (2015). In that ruling, after finding the district may not withhold any of the information at issue under section 552.103 of the Government Code, we concluded the district 1) must

¹The district states it sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

withhold the information we marked under section 21.355 of the Education Code in conjunction with section 552.101 of the Government Code; 2) must withhold the information we marked pursuant to section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code; 3) must withhold the dates of birth we marked under section 552.102(a) of the Government Code and the educational transcripts we marked under section 552.102(b) of the Government Code, except for the information that reveals the employee's name, the degree obtained, and the courses taken; 4) must withhold the information we marked under section 552.117(a)(1) of the Government Code, but only to the extent the individuals at issue timely requested confidentiality under section 552.024 of the Government Code;² 5) must withhold the motor vehicle record information we marked under section 552.130 of the Government Code; 6) must withhold the social security numbers of district employees contained in the remaining responsive information under section 552.147(a-1) of the Government Code, and 7) must release the remaining responsive information. We note the Act does not permit selective disclosure of information to the public. *See id.* §§ 552.007 (b), .021; Open Records Decision No. 463 at 1-2 (1987). Thus, as a general rule, if a governmental body voluntarily releases information to a member of the public, the information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See Gov't Code* § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). We note the district again raises section 552.103 of the Government Code for the information previously ordered released in Open Records Letter No. 2015-11850. However, section 552.103 does not make information confidential under law. *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.6 (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.130). Furthermore, once this office has determined information is not excepted from disclosure, a governmental body may generally not seek another ruling pertaining to precisely the same information. *See Gov't Code* § 552.301(f); ORD 665 at 2 (governmental body not authorized to seek attorney general decision unless it in good faith believes valid legal arguments exist to support claimed exception). Thus, the information responsive to the previous request for information, which we have marked, may not now be withheld under section 552.103. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the district must rely on Open Records Letter No. 2015-11850 as a previous determination and withhold or release the information we marked in accordance with that ruling. *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). We will also address the district's claim under section 552.103 for the remaining information.

²We note, however, the district may only withhold the marked cellular telephone numbers if a governmental body did not pay for the service.

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 section 552.103(a) 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.); 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). *See* ORD 551 at 4.

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, a governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *Id.* Concrete evidence to support a claim 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. *See* Open Records Decision No. 555 (1990); *see also* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). In addition, this office has concluded litigation was reasonably anticipated when the potential opposing party hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, or when an individual threatened to sue on several occasions and hired an attorney. *See* Open Records Decision Nos. 346 (1982), 288 (1981). 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 objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish litigation is reasonably anticipated. *See* Open Records Decision No. 361 (1983).

The district states, prior to its receipt of the instant request, it reasonably anticipated litigation when it received a notice to preserve evidence from the requestor, an attorney for a student's parents. However, the requestor's representative contends the district has failed to provide sufficient evidence to prove it reasonably anticipated litigation. Based on our review, and the totality of circumstances, we find the district reasonably anticipated litigation when it received the request for information. We also find the district has established the remaining information is related to the anticipated litigation for purposes of section 552.103(a). Therefore, we find the district may withhold the remaining information under section 552.103(a) 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. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

In summary, the district must rely on Open Records Letter No. 2015-11850 as a previous determination and withhold or release the information we marked in accordance with that ruling. The district may withhold the remaining 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

³As our ruling is dispositive, we need not address the district's remaining argument against disclosure.

Ref: ID# 571701

Enc. Submitted documents

c: Requestor
(w/o enclosures)