



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 9, 2017

Ms. Amanda K. Davis
Associate General Counsel
Dallas County Schools
P.O. Box 227177
Dallas, Texas 75222

OR2017-00531

Dear Ms. Davis:

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# 640755 (Reference Nos. W000960-101116, W000967-101216, W000968-101316, W000971-101416, W000974-101716, W000979-101816, W000989-101916, W000990-102016, W000991-102116, W000993-102416, W000994-102516, W000997-102616, W000998-102716, W001000-102816, W001003116, W001008-110116, W001012-110216, W001013-110316, W001071-110416, W001112-110716, W001122-110816, W001125-110916, W001129-111116, W001131-111416, W001133-111616, W001140-111816, W001139-111816, W001142-111816, W001151-112216, W001152-112216, W001153-112216, W001154-112216, W001155-112216, W001156-112216, W001157-112216, W001158-112216, W001159-112216, W001160-112216, W001161-112216, W001162-112216, W001164-112216, W001165-112216, W001166-112216, W001167-112216, W001176-112816, W001179-113016, W001180-113016, W001147-11216, W001163-112216, W001171-112316, W001174-112516, W001181-120116, W001192-120816).

Dallas County Schools ("DCS") received several requests from the same requestor for information related to school bus stop arm citations issued within specified periods of time, information related to specified citations, and information related to the safety equipment pertaining to such school buses. You claim the submitted information is excepted from

disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we must address DCS's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). Further, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). We note DCS received the first request for information on October 11, 2016. Accordingly, DCS's fifteen-business-day deadline under section 552.301(e) was November 1, 2016. However, the envelope in which DCS provided its written comments stating the reasons why the stated exceptions apply as required by section 552.301(e) was post-marked November 3, 2016. *See id.* § 552.308(a) (deadline under the Act is met if document is sent by first class United States mail with postage prepaid and bears post office mark indicating time within the deadline period). Additionally, DCS received the second request for information on October 12, 2016. Accordingly, DCS's ten-business-day deadline under section 552.301(b) was October 26, 2016. However, the envelope containing DCS's request for a ruling as required by section 552.301(b) was post-marked October 27, 2016. *See id.* Accordingly, to the extent the submitted information is responsive to the first and second requests, we find DCS failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). DCS claims section 552.103 of the

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.

Government Code for the information responsive to the first and second requests. However, this exception is discretionary in nature. This section serves to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *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). Accordingly, DCS may not withhold any portion of the information responsive to the first and second requests under section 552.103 of the Government Code. Consequently, as DCS raises no further exceptions against disclosure, to the extent the submitted information is responsive to the first and second requests, DCS must release this information pursuant to section 552.302. However, as DCS timely submitted arguments under section 552.103 for the remaining requests, we will consider your argument under section 552.103 of the Government Code for the remaining information at issue.

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).

DCS states, and provides documentation showing, a lawsuit styled *David Sewell, et. al. v. Dallas County Schools, et. al.*, Cause No. DC-16-13227-G, was pending against DCS in the 134th District Court of the Dallas County, Texas, when it received the requests for information. Therefore, we agree litigation was pending when DCS received the requests.

We also find DCS has established the submitted information is related to the pending litigation for purposes of section 552.103(a). Therefore, DCS may withhold the submitted information not responsive to the first and second requests for information under section 552.103(a) of the Government Code.

However, once the information has been obtained by all parties to the pending 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, DCS may withhold the submitted information not responsive to the first and second requests for information under section 552.103(a) of the Government Code. DCS must release the remaining information.

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,



Kavid Singh
Assistant Attorney General
Open Records Division

KVS/som

Ref: ID# 640755

Enc. Submitted documents

c: Requestor
(w/o enclosures)