



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 9, 2017

Mr. Frank E. Pérez  
Counsel for the Texas Southmost College District  
Frank E. Pérez & Associates, P.C.  
P.O. Box 3490  
Brownsville, Texas 78523-3490

OR2017-12703

Dear Mr. Pérez:

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# 661455 (Reference No. 43306).

Texas Southmost College ("TSC"), which you represent, received a request for all proposals submitted in response to a specified request for proposals, contracts between TSC and specified entities, and checks made payable to specified entities. You claim some of 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 information.

Initially, we note a portion of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2017-03780 (2017). In Open Records Letter No. 2017-03780, we concluded TSC must release the submitted information. We understand the law, facts, and circumstances on which the prior ruling was based have not changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude TSC must continue to rely on Open Records Letter No. 2017-03780 as a previous determination and release the identical information 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 information is or is not excepted from disclosure).

Section 552.103 of the Government Code provides 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). A 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 (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 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, a lawsuit styled *English Insurance Agency, Inc. v. Texas Southmost College*, Cause No. 2016-DCL-07200, was pending against TSC in the 138th Judicial District Court of Cameron County, Texas, when it received the instant request for information. You state the information at issue is related to the pending lawsuit. Based on your representations, the submitted documentation, and our review of the information at issue, we find litigation was pending when TSC received this request for information, and the information at issue is related to the pending litigation for the purposes of section 552.103. Therefore, TSC may withhold the information at issue, which we have marked, under section 552.103(a) of the Government Code and release the remaining responsive information.

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. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that

has either been obtained from or provided to the opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude TSC must continue to rely on Open Records Letter No. 2017-03780 as a previous determination and release the identical information in accordance with that ruling. TSC may withhold the information at issue, which we have marked, under section 552.103(a) of the Government Code. TSC must release the remaining responsive 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](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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/sb

Ref: ID# 661455

Enc. Submitted documents

c: Requestor  
(w/o enclosures)