



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 14, 2017

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

Mr. Scott W. Thomas
Counsel for Arlington Independent School District
Eichelbaum Wardell Hansen Powell & Mehl, P.C.
5801 Tennyson Parkway, Suite 360
Plano, Texas 75024

OR2017-13100

Dear Mr. Thomas:

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# 662165.

The Arlington Independent School District (the "district"), which you represent, received two requests from different requestors for information pertaining to the air quality at a specified school. We understand you have redacted student-identifying information from the submitted documents pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code.²

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. A copy of this letter may be found on the Office of the Attorney General's website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

²Although you also raise section 552.101 of the Government Code, you have not provided any arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. See Gov't Code §§ 552.301, .302.

We have considered the exception you claim and reviewed the submitted representative sample of information.³

Initially, we note some of the submitted information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2017-12090 (2017) and 2017-12312 (2017). In Open Records Letter Nos. 2017-12090 and 2017-12312, we concluded, in part, the district must release some of the information at issue. Section 552.007 of the Government Code provides information that has been voluntarily released to a member of the public 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*; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Accordingly, the district may not withhold previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you raise section 552.103 of the Government Code for the previously released information, this section does not prohibit the release of information or make information confidential. *See 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.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the district may not withhold the previously released information under section 552.103 of the Government Code. However, we will address your argument under section 552.103 for any submitted information not previously released in accordance with the prior rulings.

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

³We 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.

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 claiming section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information, and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

You state, and provide documentation showing, prior to the district's receipt of the instant requests, a lawsuit styled *Farr v. Arlington Independent School District*, Cause No. 236-291133-17, was filed and is currently pending against the district in the Judicial District Court of Tarrant County, Texas. Therefore, we agree litigation was pending on the date the district received the present requests for information. You also state the information at issue pertains to the substance of the lawsuit claims. Based on your representations and our review, we find the information at issue is related to the pending litigation. Therefore, to the extent the submitted information was not previously released, we conclude the district may withhold the submitted information under section 552.103 of the Government Code. The district must release the remaining information.

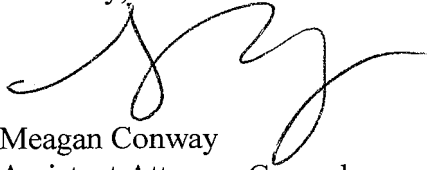
Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See Open Records Decision Nos. 349 (1982), 320 (1982).* Thus, information that has either been obtained from or provided to all parties to the pending 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 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, appearing to read 'Meagan Conway', with a long horizontal flourish extending to the right.

Meagan Conway
Assistant Attorney General
Open Records Division

MC/bw

Ref: ID# 662165

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

DEC 20 2017

At 3:11 p M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-17-002723

ARLINGTON INDEPENDENT
SCHOOL DISTRICT,
Plaintiff,

v.

KEN PAXTON, ATTORNEY
GENERAL OF TEXAS, and
MEAGAN J. CONWAY, in her
official capacity as Assistant
Attorney General,
Defendants.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200th JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

This is an open records lawsuit brought under the Texas Public Information Act (PIA), Texas Government Code chapter 552. All matters in controversy between Plaintiff Arlington Independent School District (the District) and Defendants Ken Paxton, Attorney General of Texas, and Meagan J. Conway, in her official capacity as Assistant Attorney General (collectively, "the Attorney General") have been resolved, and the Parties agree to the entry and filing of an agreed final judgment. *See* Exhibit A (Settlement Agreement).

Pursuant to Tex. Gov't Code § 552.325(d) the Court shall allow the requestor a reasonable period of time to intervene after the Attorney General attempts to notify the requestor of the proposed settlement. The Attorney General represents to the Court and the Court hereby takes judicial notice that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent notice by certified mail to each requestor's last known address on Oct. 3rd, 2017, providing reasonable notice of this setting and of each requestor's right to intervene in the suit. *See* Ex. B (proof of mailing). The requestors were informed of the proposed Settlement Agreement under which the District



may withhold the requested information as agreed upon by the Parties. The requestors were also informed of the right to intervene in this lawsuit to contest the withholding of the information. None of the requestors has informed the Attorney General of their intention to intervene and no plea in intervention has been filed.

After considering the agreement of the Parties and the law, the Court is of the opinion that entry of this Agreed Final Judgment is appropriate, disposing of all claims between the Parties in this suit.

THE COURT THEREFORE FINDS AND ORDERS THAT:

1. The District and the Attorney General have agreed that, in accordance with the PIA and under the facts presented, the information at issue in this suit is excepted from disclosure pursuant to Texas Government Code section 552.103 (hereinafter, the Excepted Information);

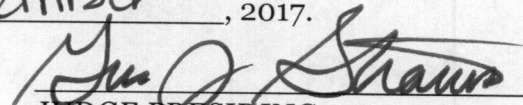
2. The District may withhold the Excepted Information described in Paragraph 1 of this order;

3. All court cost and attorney fees are taxed against the parties incurring the same;

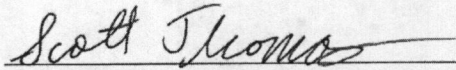
4. All relief not expressly granted is denied; and

5. This Agreed Final Judgment finally disposes of all claims between the District and the Attorney General in this cause and is a final judgment.

Signed this 20 day of December, 2017.

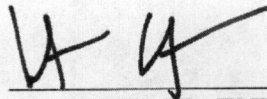

JUDGE PRESIDING

AGREED:



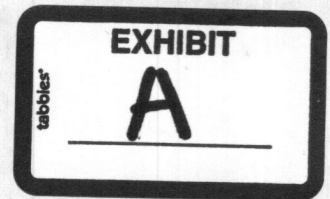
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ATTORNEY FOR DEFENDANTS



CAUSE NO. D-1-GN-17-002723

ARLINGTON INDEPENDENT	§	IN THE DISTRICT COURT OF
SCHOOL DISTRICT,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	TRAVIS COUNTY, TEXAS
KEN PAXTON, ATTORNEY	§	
GENERAL OF TEXAS, and	§	
MEAGAN J. CONWAY, in her	§	
official capacity as Assistant	§	
Attorney General,	§	
<i>Defendants.</i>	§	200th JUDICIAL DISTRICT

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between Plaintiff Arlington Independent School District (the District) and Defendants Ken Paxton, Attorney General of Texas, and Meagan J. Conway, in her official capacity as Assistant Attorney General (collectively, "the Attorney General"). This Agreement is made on the terms set forth below.

BACKGROUND

The District received three written requests for information pursuant to the Texas Public Information Act (PIA). The requests sought numerous categories of information concerning a District property and several named individuals. Upon receiving each written request, the District sought an open records ruling from the Attorney General pursuant to Texas Government Code section 552.301. The Attorney General issued Open Records Letter Rulings OR2017-12090, OR2017-12312, and OR2017-13100 (the Letter Rulings) in response to the District's requests. In each instance the rulings concluded, as is relevant to this lawsuit, that certain portions of the requested records were not excepted

from required disclosure and must be released to the requestors (the "Information at Issue").

The District disputed the Attorney General's determinations and filed suit to challenge the Letter Rulings pursuant to Texas Government Code section 552.324. Texas Government Code section 552.325(c) allows the Attorney General to enter into settlement under which the Information at Issue the may be withheld. The parties wish to resolve this matter without further litigation.

TERMS

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this settlement agreement ("Agreement") agree and stipulate that:

1. The Information at Issue relates to litigation to which the District is a party and accordingly is excepted from disclosure pursuant to Tex. Gov't Code § 552.103.
2. The District may withhold the Information at Issue from the requestors.
3. The District and the Attorney General agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the Court for approval, on the uncontested docket, with at least 21 days' prior notice to the requestors. This Agreement will be attached to the agreed final judgment as "Exhibit A."
4. Pursuant to Tex. Gov't Code Section 552.325(c), the Attorney General will notify the requestors of this Agreement and of each requestor's right to intervene to contest this Agreement and the Court's entry of any agreed final judgment in the case.
5. If any requestor intervenes to contest this Agreement, a final judgment entered in this lawsuit will prevail over the Agreement, to the extent of any conflict.
6. Each party to this Agreement will bear its own costs, including attorneys' fees relating to this litigation.
7. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be

be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to the Agreement.

8. The District warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the District has against the Attorney General arising out of the matters described herein.
9. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General has against the District arising out of the matters described in this Agreement.
10. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

ARLINGTON INDEPENDENT SCHOOL
DISTRICT

KEN PAXTON, ATTORNEY GENERAL OF
TEXAS, AND MEAGAN J. CONWAY, IN HER
OFFICIAL CAPACITY AS ASSISTANT
ATTORNEY GENERAL

By: 

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Date: 9/5/17

By: 

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Date: 9/26/17