



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 5, 2017

Mr. Jameson C. Baker  
Counsel for the Judson Independent School District  
Walsh Gallegos Treviño Russo & Kyle P.C.  
P.O. Box 460606  
San Antonio, Texas 78246-0606

OR2017-14957

Dear Mr. Baker:

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# 665119.

The Judson Independent School District (the "district"), which you represent, received a request for information pertaining to a former district employee. 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 information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted information includes contracts relating to the receipt or expenditure of funds by the district that are subject to section 552.022(a)(3). This information must be released unless it is made confidential under the Act or other law. *See id.* You seek to withhold the information subject to section 552.022(a)(3) under section 552.103 of the Government Code. However, this exception is discretionary in nature and does not make information confidential under the Act. *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 Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the information subject to section 552.022(a)(3), which we have marked, may not be withheld under section 552.103 of the Government Code. Accordingly, as you raise no further exceptions against disclosure for this information, the district must release the information we have marked pursuant to section 552.022(a)(3) of the Government Code. However, we will consider your argument against disclosure of the remaining information.

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 demonstrating, a lawsuit styled *Crain v. Judson Independent School District*, Civil Action No. 5:16-CV-00832-XR was pending against the district in United States District Court of the Western District of Texas, San Antonio Division at the time of the present request for information. You state the information at issue is related to the pending lawsuit. Based on your representations and our review of the information at issue, we find litigation was pending when the district received this request for information, and the information at issue is related to the pending litigation for the purposes of section 552.103. Therefore, the district may withhold the remaining information under section 552.103(a) of the Government Code.

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, the district must release the information we have marked pursuant to section 552.022(a)(3) of the Government Code. 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](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,



Sidney M. Pounds  
Assistant Attorney General  
Open Records Division

SMP/sdk

Ref: ID# 665119

Enc. Submitted documents

c: Requestor  
(w/o enclosures)