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ATTORNEY GENERAL OF TEXAS

July 6, 2017

Mr. Tony Resendez
Counsel for La Vernia Independent School District
Walsh Gallegos Treviño Russo & Kyle, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2017-14976

Dear Mr. Resendez:

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# 665070.

The La Vernia Independent School District (the "district"), which you represent, received a request for certain information pertaining to seven named individuals. 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 portions of the submitted information are subject to section 552.022 of the Government Code. This section provides, in pertinent part:

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

...

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]

Gov't Code § 552.022(a)(2). In this instance, the requestor seeks, among other things, the title and salary of district employees. This information is subject to section 552.022(a)(2) of the Government Code, and must be released unless it is confidential under the Act or other law. You argue this information is excepted from disclosure by section 552.103 of the Government Code. Section 552.103 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *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); Open Records Decision No. 665 at 2n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold the information subject to section 552.022(a)(2), which we have marked, under section 552.103 of the Government Code. As no other exceptions to disclosure are raised, the information must be released pursuant to section 552.022(a)(2) of the Government Code. However, we will consider your argument under section 552.103 of the Government Code for the remaining information.

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).

You contend the information not subject to section 552.022 of the Government Code is related to litigation to which the district is a party. You state, and provide documentation demonstrating, a lawsuit styled *Doe, et al. vs. La Vernia Independent School District, et al.*, Civil Action No. 5:17-cv-310, was pending in the United States District Court, Western District - San Antonio Division when the district received the request for information. 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.

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.

The district must release the information we have marked under section 552.022 of the Government Code. The district may withhold the remaining information under section 552.103 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,



Jahna Ward
Attorney
Open Records Division

JW/som

Ref: ID# 665070

Enc. Submitted documents

c: Requestor
(w/o enclosures)