



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 21, 2019

Mr. Miguel Salinas
Staff Attorney
Brownsville Independent School District
1900 East Price Road, Suite #302
Brownsville, Texas 78521-2417

OR2019-16983

Dear Mr. Salinas:

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# 771527 (ORR# 8672).

The Brownsville Independent School District (the "district") received a request for all documents, including resumes, pertaining to cheer coaches at a specified district high school and information pertaining to cheer tryouts at the high school. 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 you have only submitted information pertaining to payments made by the district. To the extent any information responsive to the remaining portions of the request existed on the date the district received the request, we assume the district has released it. If the district has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the 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). Upon review, we find some of the submitted information consists of information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body, and; thus, is subject to section 552.022(a)(3) of the Government Code. The district must release the information subject to section 552.022(a)(3) unless it is made confidential under the Act or other law. *See id.* Although the district raises section 552.103 of the Government Code for this information, 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 section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the district may not withhold the information subject to section 552.022(a)(3) under section 552.103 of the Government Code. However, as sections 552.101 and 552.136 of the Government Code make information confidential for purposes of section 552.022(a)(3), we will address the applicability of these sections to the information at issue.¹ Further, we will consider your assertion of section 552.103 for the information not subject to section 552.022 of the Government Code.

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

¹ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requester 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 section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing that (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. *See 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). *See* ORD 551.

You state, prior to the district's receipt of the instant request, a lawsuit styled *Lopez v. Brownsville Independent School District*, Cause No. 1:7-CV-00240, was pending against the district in the United States District Court for the Southern District of Texas. Therefore, we agree litigation was pending on the date the district received the present request for information. You assert information at issue relates to the subject matter of the pending litigation. Based on your representations and our review, we find the information at issue is related to the pending litigation. Therefore, we conclude the district may withhold the information we marked under section 552.103 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). 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, we 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.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 560.003 of the Government Code. Section 560.003 provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003; *see also id.* §§ 560.001(1) (defining "biometric identifier" to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). Therefore, the district must withhold the fingerprint we marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.136 of the Government Code provides, "Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b);

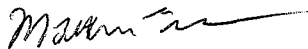
see id. § 552.136(a) (defining “access device”). Accordingly, the district must withhold the routing and bank account numbers in the remaining information under section 552.136 of the Government Code.

In summary, the district may withhold the information we marked under section 552.103 of the Government Code. The district must withhold the fingerprint we marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The district must withhold the routing and bank account numbers in the remaining under section 552.136 of the Government Code. The district 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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/be

Ref: ID# 771527

Enc. Submitted documents

c: Requestor
(w/o enclosures)