



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 3, 2019

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

OR2019-18351

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# 773692.

The Brownsville Independent School District (the "district") received a request for information pertaining to specified employees. 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 the submitted information contains copies of minutes and agendas of public meetings of the district's board of trustees. Minutes and agendas of a governmental body's public meetings are specifically made public under the Open Meetings Act, chapter 551 of the Government Code. *See id.* §§ 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying on request to governmental body's chief administrative officer or officer's designee). As a general rule, the exceptions to disclosure found in the Act, such as section 552.103, do not apply to information other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the district must release the submitted agendas and minutes of public meetings pursuant to section 551.022 of the Government Code.

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

(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[.]

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(3), (17). A portion of the submitted information contains information in an account, contract, or voucher relating to the receipt or expenditure of funds by the city that is subject to section 552.022(a)(3) and court-filed documents that are subject to section 552.022(a)(17). This information must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(3), (17). You seek to withhold the information at issue under section 552.103 of the Government Code. However, section 552.103 is discretionary in nature and does not make information confidential under the Act. *See* 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). Therefore, the information subject to sections 552.022(a)(3) and 552.022(a)(17), a representative sample of which we marked, may not be withheld under section 552.103 of the Government Code. As you raise no other exception to disclosure of this information, the district must release the information subject to section 552.022 of the Government Code. However, we will consider your arguments under section 552.103 of the Government Code for the information not subject to section 552.022 of the Government Code.

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).

The district states, and provides documentation showing, prior to the district's receipt of the instant request, a suit styled *Elia C. Lopez v. Brownsville Independent School District*, Cause No. 1:17-cv-00240, was filed by the requestor and is currently pending in the Southern District of Texas. The district states the submitted information is related to the pending lawsuit. Based on the district's representations, the submitted documentation, and our review of the information at issue, we find litigation was pending when the district received the 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 submitted agendas and minutes of public meetings pursuant to the Texas Open Meetings Act. The district must release the information subject to section 552.022 of the Government Code, a representative sample of which we marked. 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, 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,



Sean McCormick
Attorney
Open Records Division

SMC/gw

Ref: ID# 773692

Enc. Submitted documents

c: Requestor
(w/o enclosures)