



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

November 15, 2019

Ms. Kristi Godden  
Counsel for the Raymondville Independent School District  
O'Hanlon, Demerath & Castillo  
808 West Avenue  
Austin, Texas 78701

OR2019-32367

Dear Ms. Godden:

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# 797098 (RISD-19-004).

The Raymondville Independent School District (the "district"), which you represent, received a request for information pertaining to a specified newspaper advertisement. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes information subject to section 552.022 of the Government Code. Section 552.022(a)(3) provides for the required public disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body" unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(3). The submitted information contains an invoice subject to section 552.022(a)(3) of the Government Code. Although you assert the information at issue is excepted from disclosure under section 552.103 of the Government Code, this section is discretionary 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. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district

may not withhold the information we marked under section 552.103. As you raise no other exceptions to disclosure for this information, the information we marked must be released pursuant to section 552.022(a)(3) 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 that the section 552.103(a) exception 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. *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 submit documentation demonstrating, prior to the district's receipt of this request, a lawsuit styled *Cruz-Rivas vs. Raymond Independent School District*, Cause No. 2019-CV-0277-A, was filed against the district and is currently pending in the 197th Judicial District of Wallace County, Texas. You further state the remaining information is related to the pending litigation. Upon review of your arguments and the information at issue, we find the remaining information relates to litigation that was pending when the district received this request for information. Accordingly, the district may withhold the remaining information under section 552.103 of the Government Code.<sup>1</sup>

We note 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

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<sup>1</sup> As our ruling on this information is dispositive, we need not address your remaining argument against its disclosure.

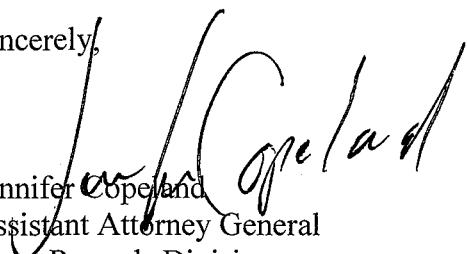
information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) 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 marked pursuant to section 552.022(a)(3) 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/gw

Ref: ID# 797098

Enc. Submitted documents

c: Requestor  
(w/o enclosures)