



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 29, 2020

Ms. Stephanie M. Brosig
Counsel for United Independent School District
J. Cruz & Associates, L.L.C.
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2020-02666

Dear Ms. Brosig:

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# 808842.

The United Independent School District (the "district"), which you represent, received a request for certain information pertaining to a specified location. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.105 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Able City Architects, CEC Engineering, Euckert Engineering, and Sepulveda Associates Architects, Inc. Accordingly, you state, and provide documentation showing, you notified the interested third parties of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted 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).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate litigation is reasonably anticipated, the governmental body must furnish “concrete evidence showing that the claim litigation may ensue is more than mere conjecture.” *Id.* In the context of anticipated litigation in which the governmental body is the prospective plaintiff, the concrete evidence must at least reflect litigation is “realistically contemplated.” *See* Open Records Decision No. 518 at 5 (1989); *see also* Attorney General Opinion MW-575 (1982) (finding investigatory file may be withheld if governmental body attorney determines it should be withheld pursuant to section 552.103 and litigation is “reasonably likely to result”).

You state the Texas Department of Transportation (the “department”) has formally notified the district that a portion of the specified location is necessary for a “right of way” for the improvement of a nearby highway. You explain the district and the department are “currently engaged in the pre-negotiation phase of [the department’s] acquisition process.” You further explain the district anticipates litigation if the district cannot arrive at an agreement with the department. You also state the pre-litigation right of way acquisition process began prior to the receipt of the instant request. Based on these representations and our review of the information at issue, we conclude litigation was reasonably anticipated on the date the district received this request for information. Furthermore, we find the information at issue is related to the anticipated litigation for purposes of section 552.103(a). Accordingly, the district may withhold the submitted information under section 552.103(a) of the Government Code.¹

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

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 anticipated 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).

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,



Jahna Ward
Assistant Attorney General
Open Records Division

JW/jxd

Ref: ID# 808842

Enc. Submitted documents

c: Requestor
(w/o enclosures)