



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 11, 2020

Mr. Tony Torres  
Counsel for Donna Independent School District  
Flores & Torres LLP  
118 E Cano Street  
Edinburg, Texas 78539

OR2020-13318

Dear Mr. Torres:

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# 827523.

The Donna Independent School District (the "district"), which you represent, received a request for warnings or reprimands pertaining to a named individual during a specified time period and all information pertaining to disciplinary recommendations pertaining to a named individual during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.135, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the requested information may have been the subject of previous requests for information, as a result of which this office issued Open Records Letters Nos. 2020-10453 (2020) and 2020-02629 (2020). We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the district may rely on Open Records Letters Nos. 2020-10453 and 2020-02629 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We note, however, the submitted

information was created after the district received the previous requests and thus, is not encompassed by the prior rulings. Accordingly, we will consider your arguments against disclosure of the submitted information.

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, a lawsuit styled *Castillo v. Donna Ind. School Dist.*, Cause No. C-3405-17-E, was pending against the district in the 275th District Court of Hidalgo County, Texas, when it received the instant request for information. You state the submitted information is related to the pending lawsuit. Based on your representations, the submitted documentation, and our review of the submitted information, we find litigation was pending when the district received this request for information, and the submitted information is related to the pending litigation for the purposes of section 552.103. Therefore, the district may withhold the submitted information under section 552.103(a) of the Government Code.<sup>1</sup>

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

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<sup>1</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,

Sean McCormick  
Attorney  
Open Records Division

SMC/jlbn

Ref: ID# 827523

Enc. Submitted documents

c: Requestor  
(w/o enclosures)