



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 29, 2007

Ms. Amanda M. Bigbee
Henslee, Fowler, Hepworth & Schwartz
306 West 7th Street, Suite 1045
Fort Worth, Texas 76102

OR2007-06690

Dear Ms. Bigbee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 279573.

The White Settlement Independent School District (the "district"), which you represent, received a request for the complete personnel file of a named former employee, information relating to any compensation paid to the named individual in connection with her separation from the district, and information concerning any attorney's fees charged to a specified settlement and paid by the district. The district did not submit any information concerning attorney's fees for our review. Therefore, we assume this information has been released to the extent it existed as of the date the request was received. *See* Gov't Code §§ 552.301, .302. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in pertinent part, as follows:

- (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 under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;
- (2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]

Gov't Code § 552.022(a)(1), (2). The submitted information includes a completed "Termination or Exit Report," as well as service records for the named individual. Therefore, as prescribed by section 552.022, the district must release this information unless it is confidential under other law. You argue that the submitted information is excepted from disclosure under section 552.103 of the Government Code. However, this section is a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022. *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); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the district may not withhold this information under section 552.103 of the Government Code. Sections 552.117 and 552.130 of the Government Code do constitute other law for purposes of section 552.022; therefore, we will consider the applicability of those exceptions to the information we have marked under section 552.022 and the remaining submitted information.

We next address the applicability of section 552.103 of the Government Code to the remainder of the submitted information. Section 552.103 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). The district 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 is pending or reasonably anticipated, 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, no pet.); *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 district must meet both prongs of this test for information to be excepted under 552.103(a).

You inform us that the district is currently involved in litigation that has been pending in the 67th Judicial Court of Tarrant County since September 2005. Further, you explain that the litigation directly relates to the submitted information because the individual whose information has been requested is a party to the pending litigation. Based on your arguments and our review of the information, we find that litigation was pending as of the date the district received the instant request and that the submitted information relates to the pending litigation. Accordingly, the district may withhold the remaining submitted information under section 552.103 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 party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Some of the submitted information has been obtained by all parties to the litigation and may not be withheld under this section. 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).

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). You inform us that the named individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, the district must withhold the home address and social security number that it has marked under section 552.117 of the Government Code in the information that has been viewed by the opposing party to the litigation as well as the information that must be released under section 552.022.¹

¹Because our ruling on these documents is dispositive, we need not address your arguments under section 552.130 of the Government Code.

In summary, with the exception of the information you have marked under section 552.117(a)(1) of the Government Code, the district must release the information we have marked under subsections 552.022(a)(1) and (2) of the Government Code and the information that has been obtained by all parties to the litigation. The remaining submitted information may be withheld under section 552.103 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

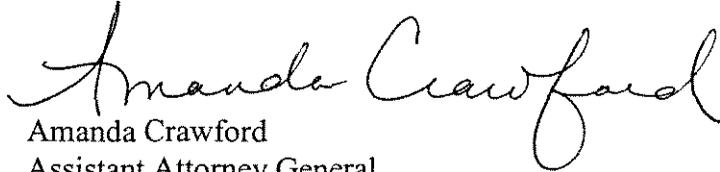
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Amanda Crawford". The signature is written in a cursive, flowing style.

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/sdk

Ref: ID# 279573

Enc. Submitted documents

c: Mr. Opie Auten
10708 Lipan Trail
Fort Worth, Texas 76108
(w/o enclosures)