



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 18, 2008

Ms. Yvonne Taylor
North Forest Independent School District
P.O. Box 23278
Houston, Texas 77228-3278

OR2008-08390

Dear Ms. Taylor:

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# 313114.

The North Forest Independent School District (the "district") received five requests from the same requestor for: (1) all e-mails sent or received by any member of the district Board of Trustees (the "board") or superintendent relating to school business since January 1, 2007; (2) information pertaining to board members since January 1, 2007; (3) information pertaining to current contracts for professional services; (4) information pertaining to expenses paid by district issued credit cards since January 1, 2007; (5) the names, dates of birth, salaries, and job assignments of all employees of the district administration building, including the Special Education Department; (6) information pertaining to the district fund designated as Texas 21st Century Learning Center; (7) information pertaining to Boris Miles Insurance; (8) all documents detailing legal bills received by the district from its outside counsel; (9) records detailing the time that the Texas 21st Learning Center (the "learning center") is locked and the alarm set each day since January 1, 2008; (10) the time sheets of any employees of the learning center who have claimed overtime; and (11) the minutes and tape recordings of board meetings since August 1, 2007.¹ You state that the district will release a portion of the requested information.² You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.103 of the

¹We note that the requestor has authorized the district to redact the names of students from the responsive information.

²You state that "information not related to the [board] and non-details of legal bills will be provided within a reasonable period of time."

Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, we note that portions the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-7892 (2008). With regard to the submitted information that is identical to the information previously requested and ruled upon by this office in this prior ruling, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the district must continue to rely on Open Records Letter No. 2008-7892 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, 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). To the extent that the submitted information is not encompassed by the previous ruling, we will address the submitted arguments.

Next, we note that the requestor asks for the time the learning center is locked and the alarm set each day since January 1, 2008. The information you submitted as Exhibits 8, 9, and 10 is not responsive to this portion of the request because it does not contain this information. This ruling does not address the public availability of the non-responsive information, which we have marked, and the district need not release it in response to the request.

We also note that you have not submitted information responsive to the requests for: (1) all e-mails sent or received by any member of the district board or superintendent relating to school business since January 1, 2007; (2) information pertaining to expenses paid by district issued credit cards since January 1, 2007; (3) the names, dates of birth, salaries, and job assignments of all employees of the district administration building, including the Special Education Department; (4) records detailing the time that the learning center is locked and the alarm set each day since January 1, 2008; or (5) the time sheets of any employees of the learning center who have claimed overtime. To the extent any information responsive to these categories existed on the date the district received this request, we assume that it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

³We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

While you state that a portion of the legal invoices you have submitted as Exhibit 11 “reveals counsel’s strategies and is exempt from disclosure[,]” we note that you have not claimed any exceptions for this information, nor have you marked the information you claim to be exempt. *See* Gov’t Code §§ 552.301(b), 552.301(e)(2); Open Records Decision Nos. 542 (1990) (concluding that Act places on governmental body burden of establishing which exceptions apply to requested information and why), 532 (1989), 515 (1988), 252 (1980). Accordingly, as you have not complied with section 552.301 with regard to this information, it is presumed public and must be released to the requestor unless a compelling reason for non-disclosure exists. *See* Gov’t Code § 552.302. As you have not provided a compelling reason for non-disclosure, the information in the legal invoices must be released to the requestor in its entirety. *See also id.* § 552.022(a)(16).

You claim section 552.103 of the Government Code for the remaining information. Section 552.103 provides:

(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 section 552.103(a).

To establish that litigation is reasonably anticipated, a governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental

body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. See Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983).

In this instance, you state that the district was subpoenaed by the Harris County District Attorney's Office to provide certain documents to the grand jury. You also state that the individuals to whom the requested information pertains work in the Special Education Department. You have not, however, provided our office with concrete evidence that the district anticipated litigation on the date it received the present request. Therefore, upon review, we find that you have failed to demonstrate that the district reasonably anticipated litigation. Accordingly, the district may not withhold any portion of the requested information under section 552.103.

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office in Open Records Letter No. 2008-7892, the district may continue to rely on this ruling as a previous determination and withhold or release the identical information in accordance with that ruling. As you claim no further exceptions to disclosure, the remaining information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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

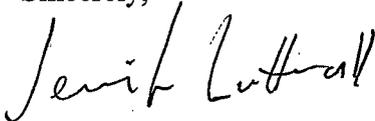
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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 challenge 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID#313114

Enc. Submitted documents

c: Mr. Wayne Dolcefino
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(w/o enclosures)