



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2009

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204

OR2009-06079

Dear Ms. McGowan:

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# 342135.

The Dallas Independent School District (the "district") received a request for: 1) all reports, documents, or audits created between August 2007 and April 2008 concerning a specified topic and exchanged between several named individuals, and 2) all e-mails between certain named individuals during a specified time period. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information, a portion of which consists of a representative sample.¹

Initially, we note that some of the responsive information is the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-05127 (2009). As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the district may continue to rely upon that ruling as a previous determination with respect to the information previously requested. *See* Open

¹We assume 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 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.

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). To the extent the submitted information is not identical, we will consider the submitted argument.

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, 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, that prior to the district's receipt of this request, a lawsuit styled *Stephen Wilson v. Dallas Independent School District*, Cause No. DC-08-08604-L, was filed and is currently pending in the District Court of Dallas County, Texas, 193rd Judicial District. Accordingly, we find that litigation was pending when the district received this request for information and that the information at issue relates to the pending litigation. Therefore, section 552.103 is generally applicable to the remaining information.

We note that once the information at issue has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect

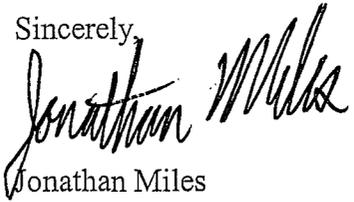
to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Further, the applicability of section 552.103(a) ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the district may continue to rely upon Open Records Letter No. 2009-05127 as a previous determination with respect to the information previously requested. 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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 342135

Enc. Submitted documents

c: Requestor
(w/o enclosures)