



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2009

Mr. Miguel A. Saldaña
Walsh, Anderson, Brown, Aldridge & Gallegos, P.C.
101 East Price Road, Suite A
Brownsville, Texas 78521

OR2009-13272

Dear Mr. Saldaña:

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# 355897.

The Brownsville Independent School District (the "district") received a request for the termination letter issued to a named superintendent. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, and 552.103 of the Government Code. 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 district has the burden of providing relevant facts and documents to show that the section 552.103 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 that 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). The district must meet both prongs of this test for information to be excepted under section 552.103.

You state that the district is a party to a lawsuit styled *Arthur Rendon v. Brownsville Independent School District Superintendent Hector Gonzales and his successor, and Brownsville Independent School District Board of Trustees, Rolando Aguilar, Ruben Cortez, Jr., Joe Colunga and Rick Zayas, individually, and in their official capacity, and Mike Saldana, in his official capacity as Counsel for Brownsville Independent School District*, Cause No. 2009-01-52-A, which was filed in the 107th Judicial District Court of Cameron County prior to the district's receipt of the request for information. Upon review, we conclude that the district was involved in pending litigation when it received the present request for information. Our review of the submitted information also shows that it is related to the pending litigation for purposes of section 552.103. Therefore, the district may withhold the submitted information under section 552.103 of the Government Code.¹

We note, however, once the information at issue has been obtained by all parties to the 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). Thus, any information at issue that has either been obtained from or provided to all opposing parties in the litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. 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).

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

¹As our ruling is dispositive, we need not address the district's remaining arguments against disclosure.

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, toll free, at (888) 672-6787.

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 355897

Enc. Submitted documents

c: Requestor
(w/o enclosures)