



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 19, 2009

Ms. Christine Baudillo
Walsh, Anderson, Brown, Aldridge & Gallegos, P.C.
P. O. Box 2156
Austin, Texas 78768

OR2009-14727

Dear Ms. Baudillo:

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# 358531.

The Mexia Independent School District (the "district"), which you represent, received a request for letters from a specified attorney to the district concerning specified litigation against the district. 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.

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.

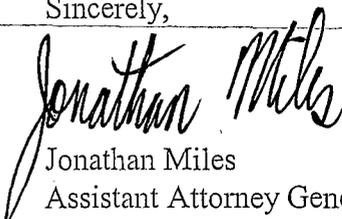
You state that the district is a party to a lawsuit styled *Colby Archibald and Robert Ross v. Mexia Independent School District*, Cause No. W09CA154, which was filed in the United States District Court for the Western Division of Texas, Waco Division prior to the district's receipt of the request for 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.

We note, however, that the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information that is related to litigation through discovery procedures. See ORD 551 at 4-5. Thus, information that has either been obtained 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. See Open Records Decision Nos. 349 (1982), 320 (1982). The district obtained the submitted information from the opposing party. Therefore, as the opposing party has had access to the submitted information, the submitted information is not excepted from disclosure under section 552.103(a) and must be disclosed. As you raise no further exceptions, the submitted information must be released.

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

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 358531

Enc. Submitted documents

c: Requestor
(w/o enclosures)