



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 19, 2010

Ms. LeAnne Lundy  
Rogers, Morris & Grover, L.L.P.  
For Klein Independent School District  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2010-17526

Dear Ms. Lundy:

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# 400684.

The Klein Independent School District (the "district"), which you represent, received a request for (1) any contracts and agreements between the district and Perdue, Brandon, Fielder, Collins & Mott ("Perdue") from January 1, 2008 to the date of the request; (2) all lawsuits filed by Perdue on behalf of the district; (3) all tax statements of properties related to filed lawsuits and amounts due on the dates of filing; (4) all lawsuit-related expenditures paid by the district or its representatives; (5) all correspondence between the district and its attorneys or representatives concerning lawsuits and collections; and (6) the amount of money collected concerning filed lawsuits.<sup>1</sup> You state the district does not maintain some of the requested information.<sup>2</sup> You claim the requested information is excepted from

---

<sup>1</sup>You state the district sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

<sup>2</sup>We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

disclosure under sections 552.103, 552.107, and 552.136 of the Government Code.<sup>3</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>4</sup> We have also received comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We note the submitted information contains information subject to section 552.022 of the Government Code. Section 552.022(a) provides in part that:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

*Id.* § 552.022(a)(3). In this instance, the submitted information includes information in an account, voucher, or contract relating to the expenditure of public funds by the district. Thus, the district must release this information pursuant to section 552.022(a)(3) unless it is expressly confidential under other law. Although you raise section 552.103 of the Government Code for this information, this section is a discretionary exception to disclosure that protect the governmental body's interests and may be waived. *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); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022. Therefore, the district may not withhold any of the information subject to section 552.022 under section 552.103. However, some of the information subject to section 552.022 is excepted from public disclosure under section 552.136 of the Government Code, which is "other law" for purposes of section 552.022. Thus, we will consider the applicability of this exception to the

---

<sup>3</sup>Although you also raise sections 552.101, 552.130, 552.137, and 552.147 of the Government Code as exceptions to disclosure of the requested information, you have provided no arguments regarding the applicability of these sections. Thus, we assume you no longer assert these exceptions. *See* Gov't Code §§ 552.301(e), .302.

<sup>4</sup>We assume that the "representative sample" of information 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.

information subject to section 552.022. Additionally, we will consider your arguments for the information not subject to section 552.022.

Section 552.136 states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Upon review, we conclude the bank account and routing numbers we have marked are access device numbers for purposes of section 552.136. Thus, the district must withhold this marked information under section 552.136 of the Government Code.<sup>5</sup>

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.

*Id.* § 552.103(a), (c). The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). 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

---

<sup>5</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information including a bank account number and routing number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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.*); ORD 551 at 4. A governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

The district states, and has provided documentation showing, that prior to the district's receipt of the request, a lawsuit styled *Klein Independent School District v. Fred T. Blanton*, Cause No. 2010-18643, was filed and is currently pending in the 11th District Court of Harris County, Texas. Further, the district contends the remaining information concerns tax lawsuits filed by the district's tax attorneys and, thus, is related to the district's pending tax litigation against the requestor. Although the requestor states he has filed a motion to dismiss with regard to *Klein Independent School District v. Fred T. Blanton*, he does not state the motion has been granted, only that the issue is moot. Thus, the requestor does not state no litigation is pending. Based on the district's representation and our review, we agree litigation was pending on the date the district received the present request for information. We also find the submitted information is related to the lawsuit pending before the court. Accordingly, we conclude the information not subject to section 552.022(a)(3) may be withheld under section 552.103 of the Government Code.

We note, 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. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the pending 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).

In summary, the district must release the information we have marked under section 552.022(a)(3) of the Government Code. In releasing this information, the district must withhold the information we have marked under section 552.136 of the Government Code. 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](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,

A handwritten signature in cursive script, appearing to read "Jennifer Burnett".

Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 400684

Enc. Submitted documents

c: Requestor  
(w/o enclosures)