



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 14, 2011

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

OR2011-10028

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# 423784.

The Dallas Independent School District (the "district") received a request for twenty categories of information pertaining to district employees, complaints against the district and the Dallas Alternate Certification program, complaints filed against district employees, employee appraisals, investigations of employees, and employee performance. You state you do not possess information responsive to categories two and nine of the request.<sup>1</sup> You claim that the remaining 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 representative sample of information.<sup>2</sup>

Initially, we address your contention the request for information has been withdrawn by operation of law because the requestor has failed to respond to the itemized cost estimate for

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the governmental body. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio, writ dismissed) Open Records Decision No. 452 at 3 (1986).

<sup>2</sup>We 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 letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

copies of the requested information. Under section 552.2615 of the Government Code, a governmental body is required to provide a requestor with an estimate of charges when a request to inspect a paper record will result in the imposition of a charge that will exceed forty dollars. *See* Gov't Code § 552.2615. The relevant portion of section 552.2615 provides:

(a) . . . If an alternative less costly method of viewing the records is available, the statement must include a notice that the requestor may contact the governmental body regarding the alternative method. The governmental body must inform the requestor of the responsibilities imposed on the requestor by this section and of the rights granted by this entire section and give the requestor the information needed to respond, including:

(1) that the requestor must provide the governmental body with a mailing, facsimile transmission, or electronic mail address to receive the itemized statement and that it is the requestor's choice which type of address to provide;

(2) that the request is considered automatically withdrawn if the requestor does not respond in writing to the itemized statement and any updated itemized statement in the time and manner required by this section; and

(3) that the requestor may respond to the statement by delivering the written response to the governmental body by mail, in person, by facsimile transmission if the governmental body is capable of receiving documents transmitted in that manner, or by electronic mail if the governmental body has an electronic mail address.

(b) A request . . . is considered to have been withdrawn by the requestor if the requestor does not respond in writing to the itemized statement by informing the governmental body within 10 business days after the date the statement is sent to the requestor that

(1) the requestor will accept the estimated charge;

(2) the requestor is modifying the request in response to the itemized statement; or

(3) the requestor has sent to the attorney general a complaint alleging that the requestor has been overcharged for being provided with a copy of the public information.

*Id.* § 552.2615(a), (b). You provide documentation showing you provided the requestor with an itemized cost estimate for information responsive to the request. *See id.*

§§ 552.2615(a), 552.263(f). You further inform us the requestor has not responded to the cost estimate. *See id.* § 552.2615(a)(2) (request automatically withdrawn if requestor does not respond to itemized estimate of charges). However, we have examined the cost estimate at issue and have determined it does not comply with the provisions of section 552.2615. Specifically, the estimate did not inform the requestor that inspection of the records would be a less costly method of obtaining the information. *See id.* § 552.2615(a). Accordingly, we conclude the requestor's public information request has not been withdrawn by operation of law, and we will address your argument against disclosure of the submitted information.

Next, we note you have only submitted information pertaining to categories 5, 7, 16, and 17 of the request. Although you indicate the district submitted a representative sample of information, no portion of the submitted representative sample pertains to the remaining categories of the request. Please be advised this open records letter applies only to the types of information you have submitted for our review. Therefore, this ruling does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to our office. *See id.* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301 of the Government Code, information at issue is presumed to be public). Because you have not submitted information responsive to the categories of the request other than categories 5, 7, 16, and 17, we assume the district has released any such information that it possesses. *See id.* §§ 552.301, .302. If you have not released any such information, you must do so at this time. *See Open Records Decision No. 664 (2000)* (noting if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Section 552.103 of the Government Code provides, in part:

(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 the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (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, the district received the instant request for information after a lawsuit was filed by the requestor against the district in the 95th Judicial Court of Dallas County. Based on your representation and our review, we conclude litigation involving the district was pending when the district received the request. You also state the submitted information is related to the pending litigation because it pertains to the issues that serve as the basis of the lawsuit. Based on your representations and our review, we find the submitted information is related to the pending litigation for purposes of section 552.103. Therefore, we conclude the district may withhold the submitted information 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. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party 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 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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 423784

Enc. Submitted documents

c: Requestor  
(w/o enclosures)