



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 31, 2012

Ms. Paula Maddox Roalson  
For Huntsville Independent School District  
Walsh, Anderson, Gallegos, Green and Treviño, P.C.  
P.O. Box 2156  
Austin, Texas 78768-2156

OR2012-08374

Dear Ms. Roalson:

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# 455074.

The Huntsville Independent School District (the “district”), which you represent, received a request for educational information pertaining to a specified student and write-ups, memoranda, and reprimands of employees directly responsible for providing services to the specified student for the past four years. You state the district has released educational records to the requestor. You claim the submitted 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.

Initially, we note the submitted information contains completed employee evaluations subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by section 552.108.” Gov’t Code § 552.022(a)(1). Pursuant to section 552.022(a)(1), a completed evaluation is expressly public unless it is either excepted under section 552.108 of the Government Code or made confidential under the Act or other law. You claim the completed evaluations are excepted from disclosure under section 552.103 of the Government Code. However, section 552.103 is a discretionary exception that protects a governmental body’s interests and is, therefore, not “other law” for purposes of section 552.022. *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 No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold the completed evaluations, which you have labeled AG000001 through AG000009 and AG000012

through AG000149, under section 552.103 of the Government Code. However, we will consider your argument under section 552.103 against disclosure of the information not subject to section 552.022.

Section 552.103 of the Government Code provides, in 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). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See* Open Records Decision No. 551 at 4 (1990).

You inform us, and the request reflects, that simultaneously with the submission of the request for information, the requestor requested a due process hearing involving the district before the Texas Education Agency. We understand the due process hearing is a contested case hearing, which is governed by the Administrative Procedure Act ("APA"), chapter 2001 of the Government Code. This office has concluded a contested case under the APA constitutes litigation for purposes of the statutory predecessor to section 552.103. Open Records Decision No. 588 (1991). Based on your representations and our review, we determine litigation involving the district was pending on the date the district received the request for information. You state the requested information is related to the pending litigation because it concerns issues identified in the requestor's complaint. Therefore, we conclude the district may withhold the information not subject to section 552.022, which you have labeled AG000010 and AG000011, under section 552.103 of the Government Code.

We note, however, that once information has been obtained by all parties to the pending 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 pending litigation is not excepted from disclosure under section 552.103(a). Further, the applicability of section 552.103(a) ends when the litigation has concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

In summary, the district may withhold the information not subject to section 552.022, which you have labeled AG000010 and AG000011, under section 552.103 of the Government Code. The remaining 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](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,



Benjamin A. Bellomy  
Assistant Attorney General  
Open Records Division

BAB/dls

Ref: ID# 455074

Enc. Submitted documents

c: Requestor  
(w/o enclosures)