



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 27, 2014

Ms. Rebecca Bailey Weimar  
Counsel for Corpus Christi Independent School District  
Thompson & Horton, L.L.P.  
3200 Southwest Freeway, Suite 200  
Houston, Texas 77027-7528

OR2014-01539

Dear Ms. Weimar:

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# 511948.

The Corpus Christi Independent School District (the "district"), which you represent, received four requests from the same requestor for digital copies of specified recorded meetings and e-mails between named individuals regarding specified topics and the requestor. You state the district is withholding a certified closed session meeting agenda and tape recording pursuant to section 552.101 of the Government Code in conjunction with section 551.104 of the Open Meetings Act.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have

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<sup>1</sup>We note the district is not required to submit the certified agenda or tape of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether governmental body may withhold such information under statutory predecessor to section 552.101 of Government Code). We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes the withholding of certain categories of information, including a certified agenda of a closed meeting under section 552.101 in conjunction with section 551.104 of the Government Code, without the necessity of requesting an attorney general decision.

considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note you have redacted information from the submitted documents. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), 301(e)(1)(D). You do not assert, nor does our review of our records indicate, the district has been granted a previous determination to withhold such information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). In this instance, we are unable to discern the nature of the information that has been redacted. Accordingly, we find the district failed to comply with the requirements of section 552.301 of the Government Code with regard to the redacted information, and the redacted information is presumed public pursuant to section 552.302 of the Government Code. Accordingly, the district must release the redacted information to the requestor. If the district believes the redacted information is confidential and may not lawfully be released, it must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably

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<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 that those records contain substantially different types of information than that submitted to this office.

anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *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). *See* ORD 551.

Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* This office has found a pending complaint with the Equal Opportunity Employment Commission (“EEOC”) indicates litigation is reasonably anticipated. *See* Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982), 281 at 1 (1981).

You state, and provide documentation showing, prior to the district’s receipt of the instant request, the requestor filed a discrimination claim against the district with the EEOC. Based on your arguments and our review of the submitted information, we find the district reasonably anticipated litigation on the date this request was received. You also state the remaining information pertains to the substance of the discrimination claim. Based on your representations and our review, we find the remaining information is related to the anticipated litigation. Therefore, the district may withhold the remaining information under section 552.103 of the Government Code.

Generally, 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 all parties to the pending or anticipated 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 been concluded or is no longer anticipated. *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.texasattorneygeneral.gov/open\\_orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open_orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kristi L. Wilkins".

Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/bhf

Ref: ID# 511948

Enc. Submitted documents

c: Requestor  
(w/o enclosures)