



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 6, 2014

Mr. Orlando Juarez, Jr.  
Counsel for United Independent School District  
J. Cruz & Associates LLC  
216 West Village Boulevard, Suite 202  
Laredo, Texas 78041

OR2014-02362

Dear Mr. Juarez:

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# 513366.

The United Independent School District (the "district"), which you represent, received a request for information pertaining to a named former employee. You state the district will withhold information subject to section 552.117(a)(1) of the Government Code as permitted by section 552.024(c) of the Government Code, motor vehicle information pursuant to section 552.130(c) of the Government Code, and insurance policy numbers pursuant to section 552.136(c) of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.103 of the Government

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<sup>1</sup>Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body. *See* Gov't Code § 552.117. Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a) without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we address the requestor's contention the district has previously released the information at issue to the public. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). However, we note section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information that has been previously released. The requestor asserts a newspaper article pertaining to the named employee demonstrates the information at issue was previously released by the district. However, the district affirmatively denies the information at issue has been released to the public. Whether the information at issue was released is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Record Decision No. 522 at 4 (1990). Accordingly, we find section 552.007 is inapplicable to the submitted information, and we will address the district's arguments against its disclosure.

Next, we note portions of the information at issue are subject to section 552.022 of the Government Code. Section 552.022 provides in part:

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

(1) 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). The information at issue includes completed evaluations that are subject to section 552.022(a)(1). Although you raise section 552.103 of the Government Code for this information, section 552.103 is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit*, 4 S.W.3d at 475-76; Open Records Decision Nos. 665 at 2 n.5, 663 at 5 (1999) (waiver of discretionary exceptions). As such, the district may not withhold the completed evaluations, which we

have marked, under section 552.103. As you raise no other exceptions to disclosure for these evaluations, they must be released. However, we will consider your arguments, including those under section 552.103, for the remaining information not subject to section 552.022.

We note the remaining information contains a CR-3 accident report form. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by statute. Gov't Code § 552.101. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). The requestor has not provided the district with two of the three requisite pieces of information specified by the statute. Accordingly, the district must withhold the submitted CR-3 accident report under section 550.065(b) of the Transportation Code in conjunction with section 552.101 of the Government Code.

You assert the remaining information is excepted from disclosure under section 552.103 of the Government Code, which provides, in relevant 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 section 552.103(a) applies in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the requested information 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 at 4.

You inform us, and have provided documentation demonstrating, an original petition was filed in the District Court of Webb County prior to the district's receipt of the instant request for information. You inform us the district is named as a defendant in the case. Based on your representations and our review, we find that litigation to which the district is a party was pending on the date the district received the request. You state, and we agree, the remaining information is related to the litigation. Therefore, the district may generally withhold the remaining information under section 552.103 of the Government Code.

We note, however, the opposing party has seen or had access to some of the information at issue. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. *See* ORD 551 at 4-5. Thus, once the opposing party has seen or had access to information relating to the anticipated litigation through discovery or otherwise, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Upon review, we find the information we have marked has been seen by the opposing party and may not be withheld under section 552.103. The remaining information at issue may be withheld under section 552.103 of the Government Code.<sup>2</sup> We also note the applicability of section 552.103 ends once the related litigation concludes or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Lastly, we note the requestor identifies herself as an employee and representative of the City of Laredo. Accordingly, the district has the discretion to release the information pursuant to an intergovernmental transfer. This office has concluded that information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. However, the transfer of confidential information from one governmental body to another is prohibited where a relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute's enumerated entities. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body); *see also* Open Records Decision Nos. 655, 650 (1996) (transfer of

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

confidential information to federal agency impermissible unless federal law requires its disclosure).

In summary, the district must release the completed evaluations we have marked under section 552.022 of the Government Code. The district must withhold the submitted CR-3 accident report under section 550.065(b) of the Transportation Code in conjunction with section 552.101 of the Government Code. With the exception the information we have marked for release, the district may withhold the remaining information under section 552.103 of the Government Code; however, the district may exercise its discretion to release the information subject to section 552.103 to the requestor based on the doctrine of intergovernmental transfer.

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,



Megan G. Holloway  
Assistant Attorney General  
Open Records Division

MGH/akg

Ref: ID# 513366

Enc. Submitted documents

c: Requestor  
(w/o enclosures)