



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 14, 2014

Ms. Katheryne MarDock
Assistant General Counsel
Public Information Office - Box 99
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2014-04346

Dear Ms. MarDock:

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# 516782.

The Houston Independent School District (the "district") received a request for (1) e-mails sent or received by a specified individual and any member of the Board of Trustees to a specified individual for a specified period of time; (2) e-mails sent or received from any district employee from a specified individual for a specified period of time; (3) information related to payments made out of 2012 bond funds; (4) grading information for vendors chosen by the 2012 bond program; and (5) information related to contractors considered in the final round for bond contracts. You claim some of the requested information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you inform us some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2013-17061 (2013). In that ruling, we determined, in part, that the district may withhold some of the information at issue under section 552.103 of the Government Code

and must release some of the information at issue. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the district must continue to rely on Open Records Letter No. 2013-17061 as a previous determination, and withhold or release the requested information that is identical to the information that was at issue in Open Records Letter No. 2013-17061 in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note you have not submitted to this office information responsive to the third, fourth, or fifth category of the request. Therefore, to the extent information responsive to these categories of the request exists and was not previously withheld pursuant to Open Records Letter No. 2013-17061, we assume the district has released it to the requestor. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If the district has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

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). The purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See id.* § 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). 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 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, 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). ORD 551 at 4.

You assert the information submitted in Exhibits 2, 3, and 4 relates to pending litigation. You state, and provide documentation showing, a lawsuit styled *Gil Ramirez Group, L.L.C. v. Houston Independent School District*, Case No. 4:10-CV-04872, was filed against the district in the United States District Court for the Southern District of Texas, Houston Division, prior to the district's receipt of the instant request for information. Thus, we find litigation was pending against the district at the time it received the request. Moreover, we find the information at issue is related to the pending litigation. Accordingly, the district may withhold Exhibits 2, 3, and 4 under section 552.103 of the Government Code.¹

We note, however, once the information at issue has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). 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, to the extent the requested information is identical to the information at issue in Open Records Letter No. 2013-17061, the district must rely on that ruling as a previous determination and withhold or release such information in accordance with that ruling. The district may withhold the information submitted as Exhibits 2, 3, and 4 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.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

¹As our ruling is dispositive, we need not address the district's remaining arguments against disclosure of this information.

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 black ink, appearing to read "Miriam A. Khalifa". The signature is fluid and cursive, with a horizontal line at the end.

Miriam A. Khalifa
Assistant Attorney General
Open Records Division

MAK/dls

Ref: ID# 516782

Enc. Submitted documents

c: Requestor
(w/o enclosures)