



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 4, 2015

Ms. Holly A. Sherman
Counsel for Klein Independent School District
Rogers, Morris & Grover, L.L.P.
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2015-11034

Dear Ms. Sherman:

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# 566052.

The Klein Independent School District (the "district"), which you represent, received a request for three categories of information related to litigation involving the district during the previous ten years, and information related to the resigning, firing, dismissal, or retiring of district administrators, teachers, staff members, and volunteers during the previous ten years.¹ You state the district will redact information pursuant to section 552.117(a)(1) of the Government Code as permitted by section 552.024(c) of the Government Code and section 552.147 of the Government Code.² You further state the district has redacted student

¹We note the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code §§ 552.024(c)(2), .117(a)(1); *see also* *id.* § 552.024(a-1) (a school district may not require an employee or former employee of the district to choose whether to allow public access to the employee's or former employee's social security number).

identifying information pursuant to the Family Educational Right and Privacy Act (“FERPA”), section 1232g of title 20 of the United States Code.³ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.⁴

Initially, you state some of the requested information may be the subject of previous requests for information that resulted in open records letter rulings. To the extent the requested information was the subject of previous rulings, the district must dispose of any such information in accordance with those rulings, provided there has been no change in the law, facts, and circumstances on which the previous rulings were based. To the extent the requested information is not the subject of a previous ruling, we will address your arguments against disclosure of the information. *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure).

Next, we note the submitted information contains agendas of public meetings of the district’s board of trustees. The notices, agendas, and minutes of a governmental body’s public meetings are specifically made public under provisions of the Open Meetings Act, chapter 551 of the Government Code. *See* Gov’t Code §§ 551.041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). Although you seek to withhold this information under section 552.103 of the Government Code, as a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the district must release the agendas of the public meetings we have marked pursuant to chapter 551 of the Government Code.

Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

³The United States Department of Education Family Policy Compliance Office (the “DOE”) has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. A copy of this letter may be found on the Office of the Attorney General’s website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

⁴We 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.

Section 552.103 of the Government Code provides, in pertinent 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 that (1) litigation was pending or reasonably anticipated on the date of the receipt of the request for information and (2) the information at issue is related to the pending or anticipated 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 from disclosure under section 552.103(a).

You inform us, and provide documentation showing, at the time the district received the present request for information, the district was a party to a pending lawsuit styled *S.A.T. and a/n/f L.T. v. Klein Independent School District Board of Trustees*, Civil Action No. 4:13-cv-03733, in the United States District Court Southern District of Texas, Houston Division. You explain the requestor filed this lawsuit, which alleges harassment, discrimination, intimidation, and retaliation by the district and its employees. You state the requestor seeks information directly related to the issues identified in the pending lawsuit. Based on your representations and our review, we find the district was a party to pending litigation when it received the present request for information. Further, we find the information at issue relates to the pending litigation. Therefore, the district may withhold the remaining information under section 552.103 of the Government Code.⁵

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

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure.

that has either been obtained from or provided to all parties to the pending 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. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the district must release the agendas of the public meetings we have marked pursuant to chapter 551 of the Government Code. The district may withhold the remaining information 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/som

Ref: ID# 566052

Enc. Submitted documents

c: Requestor
(w/o enclosures)