



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 2, 2015

Mr. W. Montgomery Meitler  
Senior Counsel  
Texas Education Agency  
1701 North Congress Ave.  
Austin, Texas 78701

OR2015-13313

Dear Mr. Meitler:

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# 571172 (TEA PIR No. 24318).

The Texas Education Agency (the "agency") received a request for all e-mails between eight agency employees over a specified time period concerning a named charter school and individual. You state you will release some information to the requestor. You state you will redact e-mail addresses under section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample information.<sup>2</sup>

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<sup>1</sup>Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

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

Initially, you state portions of the requested information were the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2012-12229 (2012), 2010-17961 (2010), and 2010-16110 (2010). We have no indication there has been any change in the law, facts, or circumstances on which these previous rulings were based. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the agency may rely on Open Records Letter Nos. 2012-12229, 2010-17961, and 2010-16110 as previous determinations and withhold the identical information in accordance with those rulings. *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 that information is or is not excepted from disclosure).

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 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 is 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). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

The agency states, and provides documentation showing, a lawsuit styled *Pippins v. Schneider*, Cause No. 4:12-CV-2732, was pending against the agency in the United States

Court of Appeals for the Fifth Circuit, when it received the request for information. Therefore, we agree litigation involving the agency was pending when the agency received the request. We also find the agency has established the submitted information is related to the pending litigation for purposes of section 552.103(a). Therefore, the agency may withhold the submitted information under section 552.103(a).<sup>3</sup>

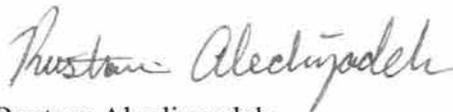
However, once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

In summary, the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the agency may rely on Open Records Letter Nos. 2012-12229, 2010-17961, and 2010-16110 as previous determinations and withhold the identical information in accordance with those rulings. The agency may withhold the submitted information under section 552.103(a) 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](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/dls

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Ref: ID# 571172

Enc. Submitted documents

c: Requestor  
(w/o enclosures)