



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 7, 2015

Mr. John J. Janssen
General Counsel
Office of Legal Services
Corpus Christi Independent School District
P.O. Box 110
Corpus Christi, Texas 78403-0110

OR2015-20967

Dear Mr. Janssen:

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# 582225.

The Corpus Christi Independent School District (the "district") received a request for interview documents from the screening process for two specified coaching positions. 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 information.¹

Initially, we note some of the submitted information, which we have marked, is not responsive to the request because it does not consist of interview documents pertaining to the specified coaching positions. This ruling does not address the public availability of that information, and the district need not release any non-responsive information.²

¹We 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.

²As our ruling is dispositive, we need not address your argument against disclosure of this information.

Section 552.103 of the Government Code 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.

Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish litigation is reasonably anticipated, a governmental body must provide this office with "concrete evidence showing the claim litigation may ensue is more than mere conjecture." *Id.* This office has concluded litigation was reasonably anticipated when the potential opposing party filed a complaint with the Equal Employment Opportunity Commission (the "EEOC"). *See* ORD 336.

You state, and provide documentation showing, prior to the district's receipt of the instant request, the requestor's client filed a discrimination claim against the district with the EEOC. Thus, we find the district has established litigation was reasonably anticipated when the district received the request. Further, we find the district has demonstrated the information at issue is related to the anticipated litigation. Accordingly, we find the district may withhold the responsive 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. *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, 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 582225

Enc. Submitted documents

c: Requestor
(w/o enclosures)