



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 15, 2015

Ms. Stephanie E. Maher
Counsel for the Lamar Consolidated Independent School District
Rogers, Morris & Grover, LLP
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2015-21676

Dear Ms. Maher:

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# 583454.

The Lamar Consolidated Independent School District (the "district"), which you represent, received a request for information related to a specified request for proposals and a specified third party. You state the district is releasing some of the requested information. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Gilbane Building Company ("Gilbane"). Accordingly, you state, and provide documentation showing, you notified Gilbane of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

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.

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 district states, and provides documentation showing, a lawsuit styled *IDCUS, Inc., d/b/a IDC Inc. v. Lamar Consolidated Independent School District*, Cause No. 15-DCV-224983, was pending against the district in the 268th District Court of Fort Bend County, Texas, when the district received the request for information. Therefore, we agree litigation was pending when the district received the request. We also find the district has established the submitted information is related to the pending litigation for purposes of section 552.103(a). Therefore, the district may withhold the submitted information under section 552.103(a) of the Government Code.

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.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 583454

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Randy Lowrance
Gilbane Building Company
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(w/o enclosures)