



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 11, 2015

Mr. Dennis J. Eichelbaum
Counsel for the Arlington Independent School District
Eichelbaum Wardell Hansen Powell & Mehl, P.C.
5300 Democracy Drive, Suite 200
Plano, Texas 75024

OR2015-26060

Dear Mr. Eichelbaum:

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# 590469.

The Arlington Independent School District (the "district"), which you represent, received a request for four categories of information pertaining to a specified incident. We understand you do not have information responsive to a portion of the request.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.103 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides, in part, the following:

- (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

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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 that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate 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 the pending or anticipated 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.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See Open Records Decision No. 551 at 4 (1990).*

You state, and provide documentation showing, prior to the district's receipt of the instant request, a lawsuit styled *Phillip Weldon v. Arlington Independent School District*, Cause No. 096-280986-15, was filed and is currently pending against the district in the 96th Judicial District Court of Tarrant County, Texas. You also state the information you have marked relates to the pending litigation. Based on the district's representation and our review, we find the district was a party to pending litigation on the date it received the request. Further, we agree the information at issue relates to the pending litigation. Accordingly, we conclude the district may withhold the information you have marked under section 552.103 of the Government Code.²

Generally, however, once information has been obtained by all parties to the pending litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *Open Records Decision Nos. 349 at 2 (1982), 320 (1982)*. Thus, information 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.

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

See Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982). As you raise no other exceptions to disclosure, the district must release the remaining information.

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,

A handwritten signature in black ink, appearing to read 'Thana Hussaini', with a stylized flourish extending to the right.

Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 590469

Enc. Submitted documents

c: Requestor
(w/o enclosures)