



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 12, 1998

Ms. Maggie H. Montelongo  
Director  
Investigations & Enforcement  
Texas State Board for Educator Certification  
1001 Trinity  
Austin, Texas 78701-2603

OR98-0115

Dear Ms. Montelongo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111509.

The Texas State Board for Educator Certification (the "Board") received a request for the document which provides a copy of the handwriting that is at issue before the Board. You contend that the requested information is excepted from disclosure under sections 552.103, 552.107, 552.110 and 552.122 of the Government Code. We have considered the exceptions you claim and have reviewed the information at issue.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *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 (1990) at 4.

To demonstrate that litigation is reasonably anticipated, the Board must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 (1989) at 5.

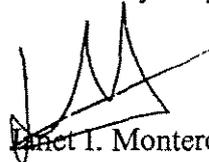
This office considers contested cases conducted under the Administrative Procedure Act to be litigation under section 552.103(a). Open Records Decision No. 588 (1991) at 7. The Board contends it is presently investigating the requestor's client and that "litigation directly related to the requested information is reasonably anticipated because the next formal step is to initiate contested-case proceedings against the requestor's client." The Board further states that the fact dispute, the handwriting issue, has not been resolved.

Additionally, you have shown a direct relationship between the information sought, and the anticipated contested case proceeding. Open Records Decision No. 429 (1985). Therefore, we conclude that the information requested is excepted from disclosure under section 552.103(a) and must be withheld.<sup>1</sup>

We note that, generally, 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. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. You indicate that information that has already been seen by the potential opposing party has been disclosed. We also note that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/glg

Ref: ID# 111509

Enclosures: Submitted documents

cc: Ms. S. Lee Wingate  
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Austin, Texas 78701  
(w/o enclosures)

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<sup>1</sup>As we resolve this matter under section 552.103, we do not address your other arguments at this time.

Ms. Jennifer Riggs  
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Austin, Texas 78703  
(w/o enclosures)