



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 17, 1998

Mr. David Anderson
Chief Counsel
Texas Education Agency
Office of Legal Services
1701 North Congress Avenue
Austin, Texas 78701-1494

OR98-0734

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114912.

The Texas Education Agency (the "TEA") received a request for information pertaining to the TAAS test from 1994 to 1997, specifically the field test questions assigned to the "Do Not Use" category. You claim that the requested information is excepted from required public disclosure under sections 552.101, 552.103, and 552.122 of the Government Code. You have submitted certain information to this office for our review.¹ We have considered your arguments and reviewed the submitted sample of records.²

To be excepted under section 552.103, the governmental body must demonstrate 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. You argue that the requested information is related to a pending lawsuit. You have submitted a copy of the

¹The submitted information includes a copy of an administered TAAS test and the answer key for the test. This information does not appear to be at issue; therefore, we do not address such information in this ruling.

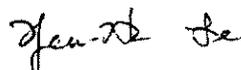
²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

petition showing that litigation is pending and have also demonstrated that the requested information relates to the pending litigation. Thus, you may withhold the information pursuant to section 552.103.³

In reaching this conclusion, however, we assume that the opposing parties to the litigation have not had access to the records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that section 552.103(a) no longer applies 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 114912

Enclosures: Submitted documents

cc: Mr. George H. Scott
Tax Research Association
5373 West Alabama, Suite 209
Houston, Texas 77056
(w/o enclosures)

³As we resolve this matter under section 552.103, we need not address the other exceptions you have raised. We caution, however, that some of the information may be confidential by law. Therefore, if the TEA receives a request in the future, at a time when litigation is no longer reasonably anticipated or pending, the TEA should seek a ruling from this office on the other exceptions raised before releasing any of the requested information. See Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).