



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 17, 1998

Mr. Raul Gonzales
Assistant Counsel
State Board for Educator Certification
1001 Trinity
Austin, Texas 78701-2603

OR98-0983

Dear Mr. Gonzales:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114379.

The State Board of Educator Certification (the "agency") received a request for all correspondence the agency has received from or sent to the College Station Independent School District (the "district") pertaining to the requestor. The requestor also seeks a copy of a specific letter from the Commissioner of Education. You state that you are unaware of any such letter from the Commissioner of Education. However, you claim that the remaining requested information is 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 documents.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, 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; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). A contested case under

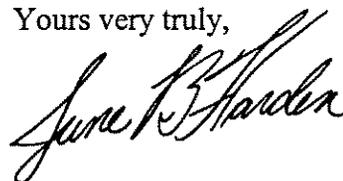
the Administrative Procedure Act is litigation for purposes of section 552.103(a). Open Records Decision No. 588 (1991).

You state that the agency certifies public school teachers and administrators pursuant to the Texas Education Code, subchapter B, chapter 21, and seeks disciplinary action against certificate holders who violate the law or professional standards of educator conduct. You also state that the agency is investigating the requestor, a certificate holder, for possible legal and ethical violations. Furthermore, you state that "the next formal step for the agency to take is to initiate contested-case proceedings against the requestor's credentials." You have demonstrated that the agency anticipates litigation in this matter. We also find that the submitted documents relate to the anticipated litigation. Therefore, the agency may withhold the requested information under section 552.103(a).

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. Open Records Decision Nos. 349 (1982), 320 (1982). We note that to the extent the requestor has accessed the controversial web-sites that information is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because we are able to make a determination under section 552.103, we do not address your additional argument against disclosure. 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/alg

Ref.: ID# 114379

Enclosures: Submitted documents

cc: Mr. Kurt Galey
2601 Brookway Circle
College Station, Texas 77845
(w/o enclosures)