



January 24, 2000

Ms. Jacqueline A. Strashun  
Supervising Attorney  
Investigations and Enforcement  
State Board of Educator Certification  
1001 Trinity  
Austin, Texas 78701-2603

OR2000-0226

Dear Ms. Strashun:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#131405.

The State Board of Educator Certification (the "SBEC") received a request for a specific investigative file. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the submitted sample documents.<sup>1</sup>

To show that section 552.103(a) is applicable, the SBEC must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *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). Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the SBEC must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision

---

<sup>1</sup>We assume that the "sample" records submitted to this office are 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.

No. 518 at 5 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986). 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 SBEC 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 requested information involves an open disciplinary investigation of a Texas certified educator for possible legal and ethical violations. Furthermore, you state that this matter will be litigated under the Administrative Procedure Act, Government Code, Chapter 2001, and under the rules promulgated by the State Office of Administrative Hearings. You have supplied our office with information which shows that an investigation is pending, and that, if appropriate, the SBEC will take enforcement action as authorized by statute. We find that the SBEC anticipates litigation in this matter. We also find that the submitted documents relate to the anticipated litigation, and may, therefore, be withheld under section 552.103(a).

We note, however, that the opposing party to the litigation has had access to some of the submitted documents. 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, and it must be released. Open Records Decision Nos. 349 (1982), 320 (1982). We have marked the documents that may not be withheld. 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).

Additionally, we note that the documents subject to release contain information that may be protected from disclosure under section 552.117 of the Government Code. Section 552.117 excepts from public disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee, as well as information revealing whether the employee has family members. Section 552.117 requires you to withhold this information if a current or former employee requested that this information be kept confidential under section 552.024. See Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989).

We also note that a social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is*

*maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994).* It is not apparent to us that the social security number contained in the records at issue was obtained or is maintained by the SBEC pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the SBEC to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue was obtained or is maintained pursuant to such a statute and is, therefore, confidential under section 405(c)(2)(C)(vii)(I). We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, the SBEC should ensure that the number was not obtained or is not maintained by the SBEC pursuant to any provision of law enacted on or after October 1, 1990.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

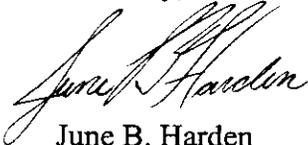
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/KSK/ljp

Ref: ID# 131405

Encl. Submitted documents

cc: Dr. Ruben A. Corkill  
Superintendent  
Southside I.S.D.  
1610 Martinez-Loyosa Road  
San Antonio, Texas 78221  
(w/o enclosures)