



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 3, 2012

Mr. Humberto Aguilera  
For Weslaco Independent School District  
Escamilla, Poneck & Cruz, L.L.P.  
P.O. Box 200  
San Antonio, Texas 78291-0200

OR2012-04819

Dear Mr. Aguilera:

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# 449493.

The Weslaco Independent School District (the "district"), which you represent, received a request for seven categories of information regarding the employment and investigation of the requestor's client. You state the district has released some of the information. You claim the remaining requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we address the requestor's contention that the district failed to comply with the procedural requirements of the Act in asking this office for a ruling. Pursuant to section 552.301(b) of the Government Code, a governmental body that receives a request for information it wishes to withhold under one of the exceptions to public disclosure must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Additionally, under

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<sup>1</sup>We assume 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 those records contain substantially different types of information than those submitted to this office.

section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The district received the request for information on January 11, 2012. The district explains it sought clarification of that request on January 25, 2012. *See id.* § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). *See also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). The district received a response to its request for clarification on January 30, 2012. Accordingly the district's ten-business-day and 15-business-day deadlines were February 13, 2012, and February 20, 2012, respectively. Upon review of the district's submissions, we find the district complied with its deadlines as set out in the Act. *See Gov't Code* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, we will consider the district's claimed exception.

Section 552.103 of the Government Code provides in part:

(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 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.

*Id.* § 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 at issue. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of 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 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See* Open Records Decision No. 551 at 4 (1990).

This office has long held for purposes of section 552.103, “litigation” includes “contested cases” conducted in a quasi-judicial forum. *See* Open Records Decision Nos. 474 (1987), 368 (1983), 336 (1982), 301 (1982). In determining whether an administrative proceeding is conducted in a quasi-judicial forum, some of the factors this office considers are whether the administrative proceeding provides for discovery, evidence to be heard, factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. *See* Open Records Decision No. 588 (1991).

You contend the requested information is related to a grievance the requestor’s client filed with the district. You explain the grievance will consist of a “Level III” hearing before the district’s board of trustees (the “board”). You state a Level III hearing is similar to a bench trial. You state the grievant is allowed to have representation, present her case, and offer witnesses and other evidence at the hearing before the board. You also state the board hears a response from the district and, acting as the fact finder, is allowed to question the parties and witnesses. You explain a record of the proceeding made by audio or audio/video recording or a court reporter is required. You note that in the event of an appeal from the board’s decision to the state commissioner of education, the record of the grievance hearing and the evidence presented to the board are reviewed. *See* Educ. Code § 7.057(c) (in appeal against school district, commissioner shall issue decision based on review of record developed at district level under substantial evidence standard of review). Based on your representations, we find you have demonstrated the district’s grievance process is conducted in a quasi-judicial forum and therefore constitutes litigation for purposes of section 552.103 of the Government Code. You explain, and provide documentation showing, prior to the district receipt of clarification, the requestor’s client filed her grievance with the district. Based on your representation and our review, we find the district was a party to pending litigation on the date it received the request for information. We also find the requested information relates to the pending litigation. We therefore conclude the district may withhold the requested information under section 552.103 of the Government Code.

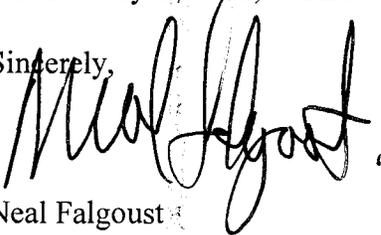
In reaching this conclusion, we assume the named employee, as the opposing party in the pending litigation, has not seen or had access to any of the information at issue. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* ORD 551 at 4–5. Thus, if the opposing party has seen or had access to information relating to litigation, through discovery or otherwise, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We note the applicability of section 552.103 ends once the

related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/ag

Ref: ID# 449493

Enc. Submitted documents

c: Requestor  
(w/o enclosures)