



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 1, 2013

Ms. LeAnne Lundy
Rogers, Morris & Grover, L.L.P.
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2013-03526

Dear Ms. Lundy:

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# 481698 (EISD Request Nos. 3395 and 3396).

The Eanes Independent School District (the "district"), which you represent, received a request for a list of files in all computers to which a named district employee has access, and another request from the same requestor for a list of files in computers used by the named district employee "at home or any other place to perform work related to [E]anes or [W]estlake" and the monthly amount of any internet, telephone, cellular telephone, or cable television bill for the named district employee that is paid for by "[E]anes or [W]estlake[.]" You state the district does not possess any information responsive to the portion of the request seeking bill information.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also received and considered comments from the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²We 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 that submitted to this office.

Section 552.103 of the Government Code provides in relevant part as follows:

(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 that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date the governmental body received 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, 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.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See Open Records Decision No. 551 at 4 (1990).*

This office has long held "litigation," for purposes of section 552.103, 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 state the submitted information is related to multiple parent grievances filed with the district by the requestor. You state complaints filed with the district are "litigation" in that the district follows administrative procedures in handling such disputes. You explain, under the district's parent grievance policy, the grievant proceeds through a three-level process wherein hearing officers hear the complaint at level one and level two, and the district's board of trustees (the "board") hears the grievance if the grievant appeals to level three. You state the grievant is allowed to be represented by counsel, present favorable evidence to the

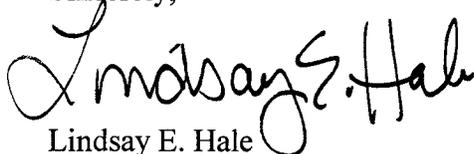
district, and present witnesses to testify on the grievant's behalf. Based on your representations, we find you have demonstrated the district's administrative procedures for parent grievances are conducted in a quasi-judicial forum, and thus, constitute litigation for purposes of section 552.103. You state, and provide supporting documentation showing, the requestor filed his grievances with the district prior to the district's receipt of the instant requests for information. You further state the Level Three appeals of the grievances were pending to go before the district's board on the date the district received the requests for information. Thus, we determine the district was a party to pending litigation at the time it received the instant requests for information. You further state the submitted information is related to pending litigation because one of the grievances pending appeal is a grievance against the district employee named in the instant request for information. Thus, we find the submitted information is related to the pending litigation. Therefore, the district may withhold the submitted information under section 552.103 of the Government Code.

We note that once the information has been obtained by all parties to the pending litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note that the applicability of section 552.103(a) ends when the litigation is concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2. As our ruling is dispositive, we need not address your remaining arguments against its disclosure.

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, 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 481698

Enc. Submitted documents

c: Requestor
(w/o enclosures)