



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 11, 2014

Mr. Darin Darby
Escamilla & Poneck, L.L.P.
P.O. Box 200
San Antonio, Texas 78291-0200

OR2014-10037

Dear Mr. Darby:

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# 525515.

The Fort Worth Independent School District (the "district"), which you represent, received a request for communications between the requestor's principal and seven named individuals during a specified time period regarding complaints made by the named individuals against the requestor. You state the district will withhold student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim the submitted information is excepted from disclosure under sections 552.103, 552.111, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We also have received and considered comments submitted by a representative of the requestor. *See* Gov't Code § 552.304 (providing interested party may submit comments stating why information should or should not be released).

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

Section 552.103 of the Government Code provides, in relevant 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.

Gov't Code § 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 [1st 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 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 state the requestor filed two grievances with the district. You explain that grievances filed with the district are "litigation" in that the district follows administrative procedures in handling such disputes. You explain the district's policy includes a three-level process wherein district administrators hear the grievance at Levels I and II, and the district's board of trustees, or its designee, hears the grievance at Level III. We understand that during these hearings the grievant is allowed to be represented by counsel, present favorable evidence to the district, and present witnesses. You state the grievant must complete the grievance

process before the grievant can file suit in district court against professional employees. 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 state the requestor filed the grievances prior to the date the district received the instant request for information. Thus, we determine the district was involved in pending litigation at the time it received the instant request for information. You state the information at issue directly relates to the pending litigation against the district. Accordingly, we conclude the district may withhold the responsive information under section 552.103 of the Government Code.²

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. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 525515

Enc. Submitted documents

c: Requestor
(w/o enclosures)