



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 13, 2017

Ms. Sarah W. Langlois  
Counsel for Harris County Department of Education  
Rogers, Morris & Grover, LLP  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2017-15675

Dear Ms. Langlois:

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# 666146.

The Harris County Department of Education (the "department"), which you represent, received a request for all video from specified cameras during a specific time period. The department states it has released some information. The department claims the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception the department claims and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.103 of the Government Code provides 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

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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 that submitted to this office.

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 has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (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 that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). See ORD 551. We note contested cases conducted under the Administrative Procedure Act (the "APA"), chapter 2001 of the Government Code, are considered litigation for purposes of section 552.103. See Open Records Decision No. 588 at 7 (1991).

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).

The department asserts litigation against the department is currently pending because prior to the department's receipt of this request, the requestor filed two internal grievances with the department. The department explains grievances filed with the department are "litigation" in that the department follows administrative procedures in handling such disputes. The department explains that under the department's grievance policy, the grievant proceeds through a three-level process wherein hearing officers hear the complaint at level one and level two, and the department's board of trustees hears the grievance if the grievant appeals to level three. The department states the grievant is allowed to be represented by counsel, present favorable evidence to the department, and present witnesses to testify on the grievant's behalf.

The department further asserts litigation against the department is currently pending because prior to the department's receipt of this request, the requestor had a suspension without pay and non-renewal hearing scheduled before an independent hearing examiner concerning the proposed non-renewal of his employment contract and his suspension without pay. The department states such non-renewal hearings are "litigation" in that the department follows administrative procedures in handling such disputes. The department explains the employee is allowed to be represented by a representative of the employee's choice, hear the evidence on which the charges are based, cross-examine adverse witnesses, and present evidence. The department states an employee may appeal the non-renewal of his contract and/or his suspension without pay with the Commissioner of Education of the Texas Education Agency (the "commissioner") pursuant to section 7.057 of the Texas Education Code. *See* Educ. Code § 7.057(a) (setting forth circumstances under which a person may appeal a school district's decision to the commissioner). We note section 157.1073(k) of title 19 of the Administrative Code specifically adopts the APA for actions brought under section 7.057 of the Education Code. 19 T.A.C. § 157.1073(k). The department explains the non-renewal and suspension without pay processes, including the hearing before the independent hearing examiner and the appeal before the commissioner, are contested cases conducted in a quasi-judicial forum.

Based on the department's representations, we find the department has demonstrated the department's administrative procedures for grievances and non-renewal and suspension without pay processes are conducted in a quasi-judicial forum, and thus, constitute litigation for purposes of section 552.103. Further, we find the department was a party to pending litigation on the date it received the request for information and the information at issue relates to the pending litigation. Accordingly, the department may withhold the submitted information under section 552.103 of the Government Code.

We note, however, that the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. *See* ORD 551 at 4-5. Therefore, if the opposing party has seen or had access to information relating to pending 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 also note the applicability of section 552.103 ends once the 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.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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/tdw

Ref: ID# 666146

Enc. Submitted documents

c: Requestor  
(w/o enclosures)