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ATTORNEY GENERAL OF TEXAS

July 26, 2017

Ms. Kristi Godden
Counsel for Edinburg Consolidated I.S.D.
O'Hanlon, McCollom & Demerath
808 West Avenue
Austin, Texas 78701-2208

OR2017-16806

Dear Ms. Godden:

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# 667996 (ECISD-352).

The Edinburg Consolidated Independent School District (the "district"), which you represent, received a request for all grievances filed on a specific date against district administrators.¹ The district claims the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception the district claims and reviewed the submitted representative sample of information.²

Section 552.103 of the Government Code provides, in relevant part:

¹The district states it sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that 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).

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.

(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). 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* Open Records Decision No. 551 at 4-5 (1990). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception applies 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 requested information is related to that litigation. *See 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. The governmental body must meet both parts of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

The district asserts litigation against the district is currently pending because prior to the district's receipt of the instant request, the submitted grievance was filed with the district pursuant to district policy. The district explains grievances filed with the district are "litigation" in that the district follows administrative procedures in handling such disputes. The district informs us the district's grievance process is a multi-level hearing process wherein various administrators and the district's Board of Trustees hears the grievance. The district further informs us these administrative proceedings are recorded, the grievant is allowed to be represented by counsel, and the grievant may present evidence during the proceedings. Additionally, the district informs us the grievant must complete the district's grievance process before he or she can appeal to either the Texas Commissioner on Education or a court of competent jurisdiction. Based on the district's representations and our review, we find the district's administrative procedure for grievances, as described above, is conducted in a quasi-judicial forum and constitutes litigation for purposes of section 552.103. Having reviewed the district's arguments and the information at issue, we determine the district was involved in pending litigation at the time it received the request for information. Further, we find the information is related to the litigation involving the district that was pending on the date the request was received.

We note, however, 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. Thus, once the opposing party has seen or had access to information relating to the 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). Upon review, we find the submitted information was seen by the opposing party to the pending litigation. Accordingly, the district may not withhold the submitted information under section 552.103 of the Government Code. The district must release the submitted information.

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# 667996

Enc. Submitted documents

c: Requestor
(w/o enclosures)