



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 14, 2017

Ms. Ylise Janssen
General Counsel
Austin Independent School District
1111 West Sixth Street
Austin, Texas 78703

OR2017-21101

Dear Ms. Janssen:

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# 675332.

The Austin Independent School District (the "district") received a request for all documents written by a named individual pertaining to a specified district middle school during a defined time period. We understand the district will release some information. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. 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).

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

- (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, 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). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

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 assert the submitted information is excepted from disclosure pursuant to section 552.103(a). You explain a district employee has filed a grievance with the district. You also explain grievances filed with the district are “litigation” in that the district follows administrative procedures in handling such disputes. You state the district’s policy includes a four-level process wherein both parties are allowed to investigate the matter and have access to records. You also state during a hearing, the grievant is allowed to present a case, including presenting testimonial and documentary evidence. Further, you state parties may be represented by counsel at the hearing. You inform us the grievant must complete the district’s grievance process in order to exhaust all administrative remedies before filing suit. Based on your representations and our review, we find the district’s administrative procedure for disputes, as described above, is conducted in a quasi-judicial forum. Thus, the district’s administrative procedure for disputes constitutes litigation for purposes of section 552.103. You represent the current grievance was pending at Level IV at the time the instant request was received. Thus, we determine the district was involved in pending litigation at the time it received the request for information. You assert the submitted information relates to the pending litigation against the district. Upon review of your arguments and the information

at issue, we find the submitted information is related to litigation involving the district that was pending on the date the present request was received. Accordingly, we find the district may withhold the submitted information under section 552.103 of the Government Code.¹

We note once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note 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.

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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 675332

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.