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ATTORNEY GENERAL OF TEXAS

October 7, 2019

Mr. Guillermo R. Garcia
Counsel for the Laredo Independent School District
Kazen, Meurer & Perez, L.L.P.
P.O. Box 6237
Laredo, Texas 78042

OR2019-28076

Dear Mr. Garcia:

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# 789770.

The Laredo Independent School District (the "district"), which you represent, received a request for information reviewed by a named individual in making a specified decision. The district states it is releasing some of the requested information. The district claims the submitted information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code.¹ We have considered the exceptions the district claims and reviewed the submitted information.

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

¹ Although the [GB] also raises sections 552.101 and 552.107 of the Government Code, the [GB] has not provided any arguments to support these exceptions. Therefore, we assume the [GB] has withdrawn its claims under these sections. See Gov't Code §§ 552.301, .302.

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 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 that (1) litigation is 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). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

For purposes of section 552.103, “litigation” includes contested cases conducted in a quasi-judicial forum. Open Records Decision Nos. 588 at 2 (1991), 474 at 6 (1987) (disciplinary action before Texas State Board of Pharmacy), 368 at 2 (1983) (administrative hearing before Commissioner of Insurance), 301 at 1-2 (1982). Likewise, “contested cases” conducted under the Texas Administrative Procedure Act, chapter 2001 of the Government Code, constitute “litigation” for purposes of section 552.103. *See, e.g.*, ORD 588 at 7, 301 at 2. Factors this office considers in determining whether an administrative proceeding is conducted in a quasi-judicial forum include 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* ORD 588 at 3-4.

The district informs us the requestor filed a grievance with the district on behalf of his client. The district informs us grievances filed with the district are “litigation” in that the district follows administrative procedures in handling such disputes. The district explains its board policy includes a multi-level process in which discovery occurs, factual questions are resolved, and an electronic record is created. The district states after the final grievance level has been held, the matter may be appealed to the Texas Education Agency and then to a court of law. Based on these representations, we find the district has demonstrated its administrative procedures for grievances are conducted in a quasi-judicial forum and, thus, constitute litigation for purposes of section 552.103. The district states the grievance at issue was pending at Level II with the district when it received the request for information. Therefore, we agree litigation was pending when the district received the request. We also find the district has established the submitted information is related to the pending litigation for purposes of section 552.103(a). Therefore, the district may withhold the submitted information under section 552.103(a) of the Government Code.²

² As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.

However, 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 has concluded. Attorney General Opinion MW-575 at 2 (1982); 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/gw

Ref: ID# 789770

Enc. Submitted documents

c: Requestor
(w/o enclosures)