



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 16, 2019

Ms. Katheryne Ellison
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2019-29099

Dear Ms. Ellison:

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# 790102 (Reference# Williams W072919).

The Houston Independent School District (the "district") received a request for (1) names, applications, and qualifications for five specified job identification numbers, and (2) resumes, qualifications, and experience for three named employees. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code.¹ We have considered the claimed exception and reviewed the submitted representative sample of information.² We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we address the requestor's claim the district failed to comply with section 552.301 of the Government Code in requesting a ruling from this office. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See*

¹ Although you also raise section 552.101 of the Government Code, you provide no arguments explaining how this exception is applicable to the information at issue. Therefore, we assume the district no longer asserts this exception. *See* Gov't Code §§ 552.301, .302.

² 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 that those records contain substantially different types of information than that submitted to this office.

Id. § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Further, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this instance, the district received the request for information on July 26, 2019. The district informs us it was closed for business on July 26, 2019. We note this office does not count the date the request was received for the purpose of calculating a governmental body's deadlines under the Act. Thus, the district's ten-business-day deadline under section 552.301(b) was August 12, 2019, and the district's fifteen-business-day deadline under section 552.301(e) was August 19, 2019. In this instance, the district submitted the information required by section 552.301(b) by electronic submission on August 12, 2019, and the district submitted the information required by section 552.301(e) by electronic submission on August 19, 2019. *See id.* § 552.309(a) (requirement to submit information within specified time period under the Act is met in timely fashion if it is submitted through attorney general's designated electronic filing system within that period). Thus, we conclude the district's correspondence to this office was timely submitted. Accordingly, we find the district complied with the procedural requirements mandated by section 552.301 of the Government Code. Therefore, we will address the district's argument against disclosure of the submitted information.

Section 552.103 of the Government Code provides, in 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 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.

This office has long held that for the 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, and submit documentation showing, prior to the district’s receipt of the instant request, the requestor filed grievances with the district. You 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 three-level process wherein district administrators and or independent hearing officers hear the grievance at Levels I and II, and the district’s board of trustees hears the grievance if the grievant appeals to Level III. You also state during these hearings, the grievant is allowed to present evidence and be represented by counsel. You further state at Levels II and III, a record of the proceeding made by audio recording or a court reporter is required. Based upon 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 state the requestor filed the grievances prior to the district’s receipt of this request for information and the matters are still pending in the district’s administrative grievance process. Thus, we determine the district was involved in pending litigation at the time it received the request for information. You state the information at issue relates to the pending litigation against the district. Upon review of your arguments and the information at issue, we find the information at issue is related to litigation involving the district that was pending on the date the request was received. Accordingly, we find the district may withhold the submitted information under section 552.103 of the Government Code.

Generally, 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 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 <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,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/gw

Ref: ID# 790102

c: Requestor