



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 6, 2020

Mr. Kirk A. Agee
Counsel for the Dickinson Independent School District
Karczewski Bradshaw Spalding Nichols Lamp Langlois
3700 Buffalo Speedway, Suite 560
Houston, Texas 77098

OR2020-03608

Dear Mr. Agee:

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# 810986.

The Dickinson Independent School District (the "district"), which you represent, received a request for information related to a named student and a specified incident. We understand the district is redacting some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ The district states it has released some information. The district claims the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-SDOE-FERPA.pdf>.

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

Section 552.103 of the Government Code provides, in 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 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).

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). To determine whether an administrative proceeding is conducted in a quasi-judicial forum, this office will consider 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 district states, and submits documentation showing, prior to its receipt of the instant request, the requestor's client filed a grievance with the district regarding the district's treatment of the named student. The district explains grievances filed with the district are "litigation" in that the district follows administrative procedures in handling such disputes. The district states its policies include 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. The district states during these hearings, the grievant is allowed to present evidence and be represented by counsel. The district also states at Levels II and III, a record of the proceeding made by audio recording or a court reporter is required. Based on these 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 grievances constitutes litigation for purposes of section 552.103.

The district states grievance is still pending in the district's administrative grievance process. Thus, we find the district was involved in pending litigation at the time it received the request for information. The district states the information at issue relates to the pending litigation against the district. Upon review of these 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, the district may withhold the submitted information under section 552.103 of the Government Code.

We note once the 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. 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 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,



Sean McCormick
Attorney
Open Records Division

SMC/eb

Ref: ID# 810986

Enc. Submitted documents

c: Requestor
(w/o enclosures)