



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 23, 2020

Mr. Christopher St. James
Assistant General Counsel
Spring Independent School District
16717 Ella Boulevard
Houston, Texas 77090

OR2020-08985

Dear Mr. St. James:

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# 817629 (PIR No. 1000).

The Spring Independent School District (the "district") received a request for seven categories of information, including certain information pertaining to the requestor's client, particular district policies, a specified district plan, and communications between named individuals. You state the district will release some information. You claim 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 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, 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.

Id. § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing 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 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 (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 “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 litigation against the district is currently pending because prior to the district’s receipt of this request, the requestor, on behalf of his client, filed a grievance with the district pursuant to Board Policy DGBA (Local). You state, and provide documentation showing, the district’s complaint process consists of three levels, wherein district administrators hear the complaint at Levels I and II, and the district’s board of trustees, or its designee, hears the complaint at Level III. You explain that during these hearings, the complainant has the right to be represented by counsel, present evidence, and participate in the hearings. We understand the complainant must complete the district’s grievance process in order to exhaust all administrative remedies before the complainant can file suit in court. Further, you state the information at issue is related to the subject of the pending grievance involving the requestor. Based on your representations and our review, we find you have demonstrated the district’s complaint process is conducted in a quasi-judicial forum and therefore constitutes litigation for purposes of section 552.103 of the Government Code. Moreover, we find the submitted information is related to the pending litigation.

We note, however, the opposing party has seen or had access to some of the information at issue. 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 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 a portion of the submitted information, which we have marked, has been seen by the opposing party and may not be withheld under section 552.103(a). Therefore, with the exception of the information we have marked for release, the district may generally withhold the submitted information under section 552.103 of the Government Code. Further, we note 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).

We note the requestor asserts a right of access to the submitted information related to his client under section 552.023 of the Government Code. Section 552.023 provides, in pertinent part:

(a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.

(b) A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.

...

(e) Access to information under this section shall be provided in the manner prescribed by Sections 552.229 and 552.307.

Gov't Code § 552.023(a), (b), (e). Pursuant to section 552.023, a person has a special right of access to information that is excepted from public disclosure under laws intended to protect the person's own privacy interest as the subject of the information. *See id.* §§ 552.023, .229 (concerning consent for release of information under section 552.023), .307 (relating to release of information under section 552.023). However, the submitted information is excepted under section 552.103, and not by a law intended to protect an individual's privacy interests. Thus, the requestor does not have a right of access to this information. Accordingly, with the exception of the information we have marked, which must be released, the district may withhold the submitted information under section 552.103 of the Government Code.¹

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.

¹ We note the requestor may have a special right of access to some of the information being released that may otherwise be protected under section 552.117(a)(1) of the Government Code. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds

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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/gw

Ref: ID# 817629

Enc. Submitted documents

c: Requestor
(w/o enclosures)