



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 2, 2022

Mr. Neil Bonavita  
Office of Legal Services  
Fort Worth Independent School District  
100 North University Drive, Suite SE 224  
Fort Worth, Texas 76107

OR2022-03132

Dear Mr. Bonavita:

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# 926818 (Ref. No. W004673).

The Fort Worth Independent School District (the "district") received a request for specified district procedures. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exception you claim 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 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). 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 (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 indicate prior to the date the district received the instant request, a named employee filed a grievance against the district. You state the requestor is an attorney who represents the named employee in that grievance. You inform us at the time the request for information was made, the requestor's client remains in the district's administrative grievance process pursuant to “District Board Policy DGBA (LOCAL).” You explain pursuant to district policy and section 11.171 of the Education Code, the district's grievance process is an administrative process that allows a grievant to be represented by counsel and to record the grievance proceedings. *See* Educ. Code § 11.171. You further state section 22.0514 of the Education Code requires a grievant to exhaust the district's administrative grievance process before filing a lawsuit against the district. *See* Educ. Code § 22.0514. Based on your representations and our review, we find you have demonstrated the district's administrative grievance process is conducted in a quasi-judicial forum and, thus, constitutes litigation for purposes of section 552.103. Thus, we determine the district was involved in pending litigation at the time it received the instant request. You state the information at issue directly relates to the pending litigation. Based on your representations and our review, we find the information at issue is related to the pending litigation. Therefore, the district may withhold the submitted information under section 552.103(a) 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. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing parties in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); 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,

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/jxd

Ref: ID# 926818

Enc. Submitted documents

c: Requestor  
(w/o enclosures)