



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 3, 1998

Mr. David Anderson
Chief Counsel
Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR98-2560

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 119591.

The Texas Education Agency ("TEA") received a request for "documents relevant to matters concerning Mr. Powhatan or Right of Way Driving School." You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

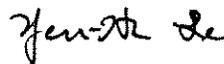
To show that section 552.103(a) is applicable, TEA must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). Contested cases conducted under the Administrative Procedure Act, chapter 2001 of the Government Code, are considered litigation under section 552.103. Open Records Decision No. 588 at 7 (1991). Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, TEA must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

TEA is authorized to regulate the commercial driver training industry, investigate complaints, and may assess penalties for violations of the Texas Driver and Traffic Safety Education Act. V.T.C.S. art. 4413(29c). Contested case hearings before the commissioner of education are subject to the Administrative Procedure and Texas Register Act. 19 T.A.C. § 157.1041(b). You state that TEA is currently investigating the school's possible violations of article 4413(29c), and that TEA foresees potential sanction on the licenses of the driver education course providers. You further explain that "the next formal step for the agency to take is to initiate contested-case proceedings against the subjects of the complaints." We conclude that litigation is reasonably anticipated. We additionally find that the submitted documents are related to the reasonably anticipated litigation for the purposes of section 552.103(a). Therefore, the documents may be withheld pursuant to section 552.103.

Generally, 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 party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. We also note that 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).¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

¹As we resolve this matter under section 552.103, we need not address the other exceptions you have raised. If TEA receives a request in the future, at a time when litigation is no longer reasonably anticipated or pending, TEA may wish to seek a ruling from this office on the other exceptions raised before releasing any of the requested information. See Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).

Ref.: ID# 119591

Enclosures: Submitted documents

cc: Ms. Susan G. Morrison
Hilgers & Watkins
San Jacinto Center, Suite 1300
96 San Jacinto Boulevard
Austin, Texas 78701
(w/o enclosures)