



November 19, 1999

Ms. Jacqueline A. Strashun
Supervising Attorney
Investigations and Enforcement
State Board for Educator Certification
1001 Trinity
Austin, Texas 78701-2603

OR99-3324

Dear Ms. Strashun:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130910.

The State Board for Educator Certification (the "board") received a request for a complaint filed against a named individual. You have submitted a copy of the requested information. You claim that it is excepted from public disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.103 of the Government Code provides in relevant part:

(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.

Act of May 25, 1999, 76th Legis., R.S., ch. 1319, § 6, 1999 Vernon's Tex. Sess. Law Serv. (to be codified as an amendment to Tex. Gov't Code § 552.103).

Under section 552.103(a), a governmental body must establish (1) that litigation is either pending or reasonably anticipated and (2) that the requested information relates to that litigation. See *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App. – Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App. – Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990). Contested cases under chapter 2001 of the Government Code constitute litigation for the purposes of section 552.103(a). Open Records Decision No. 588 at 7 (1991). The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986). To establish that litigation is reasonably anticipated, a governmental body must provide this office with “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” *Id.*

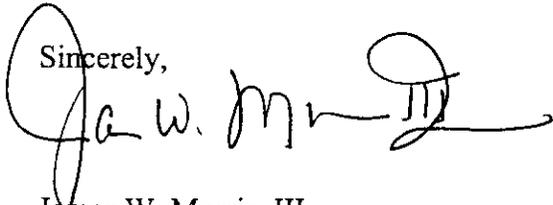
You state that the board certifies and regulates public school educators under subchapter B, chapter 21 of the Education Code, and is responsible for prosecuting disciplinary actions against certified educators, including enforcement of the Educator's Code of Ethics, 19 T.A.C. ch. 247. You state that contested cases are conducted under chapter 2001 of the Government Code. You state that the board has an open investigation concerning the person to whom the requested complaint pertains and that litigation under chapter 2001 of the Government Code is contemplated. Based on your representations, we conclude that the board has met its burden under section 552.103(a) of the Government Code.

We note, however, that the complaint indicates that the prospective opposing party to the litigation received a copy of the complaint. There is no interest in withholding information under section 552.103 of the Government Code with respect to information that has been obtained by all parties to the related litigation, through discovery or otherwise. See Open Records Decision Nos. 349 (1982), 320 (1982). Thus, because the opposing party in the anticipated litigation has seen or had access to the requested information, there is no justification for withholding it from the requestor pursuant to section 552.103(a). Therefore, the board may not withhold the requested complaint under section 552.103.

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 upon as a previous determination

regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III". The signature is written in a cursive style with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cwt

Ref: ID# 130910

Encl. Submitted documents

cc: Mr. James Doughty
KIII-TV
Corpus Christi, Texas
Fax 361-851-1541
(w/o enclosures)