



May 15, 2000

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

OR2000-1921

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# 135270.

The State Board for Educator Certification (the "board") received a request for information regarding six specific individuals, including information pertaining to the board's investigation of each named individual as well as information relating to each individual obtained "from other public agencies that do[es] not involve agency policy matters." You claim that the requested 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 the information at issue.<sup>1</sup>

To show that section 552.103(a) is applicable, the board must demonstrate that (1) litigation has been pending or reasonably anticipated at least since the date that the board received the request for information, and (2) the information at issue is related to that litigation. Gov't Code § 552.103(c); *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, the board must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records

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<sup>1</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

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).

You explain that the board is authorized to prosecute disciplinary actions against certified educators who violate the Educator's Code of Ethics. *See* Educ. Code §§ 21.041(a), (b)(7), (8); *see also* 19 T.A.C. § 247.2. You further explain that these enforcement proceedings are subject to the Administrative Procedure Act. Educ. Code § 21.041(b)(7). You have supplied this office with information which shows that, at least since the date the board received the request for information, an investigation has been pending in regard to each of the named individuals. Moreover, the board will take enforcement action as authorized by statute if any violation is found. Having reviewed the arguments and submitted information, we conclude that you have shown that litigation is reasonably anticipated under section 552.103 and that the requested information relates to the anticipated litigation. Therefore, you may withhold the requested information under section 552.103 of the Government Code.

We note, however, that a *completed* report or investigation is expressly made public by section 552.022(a)(1) of the Government Code and may not be withheld pursuant to section 552.103. We also note that 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 and such information must be disclosed. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\nc

Ref: ID# 135270

Encl: Submitted documents

cc: Mr. Joe De Los Santos  
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