



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 13, 2011

Mr. Daniel Bradford
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2011-08353

Dear Mr. Bradford:

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# 420291.

The Travis County Civil Service Commission (the "commission") received a request for information pertaining to lieutenant oral board examinations. You claim the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note the commission did not submit for our review information responsive to a portion of the request. Although you state the commission submitted a representative sample of information, no portion of the submitted representative sample pertains to the lieutenant oral board candidate interview schedule, information related to the choosing of oral board members, or written policy related to the EDF review process prior to the oral interview. Thus, we find the submitted information is not representative of the information sought in these portions of the request. Please be advised this open records letter applies to only the types of information you have submitted for our review. Therefore, this opinion does not authorize the withholding of any other requested records to the extent those records

¹We assume 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.

contain substantially different types of information than that submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public). Because you have not submitted information responsive to these portions of the request for our review, we assume you have released it. *See id.* §§ 552.301, .302. If you have not released this information, you must do so at this time. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.103 of the Government Code provides:

(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 the section 552.103(a) exception 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. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *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).

This office has held "litigation" within the meaning of section 552.103 includes contested cases conducted in a quasi-judicial forum. *See, e.g.*, Open Records Decision Nos. 474 (1987), 368 (1983), 301 (1982). In determining whether an administrative proceeding is conducted in a quasi-judicial forum, this office has considered the following: (1) whether the dispute is, for all practical purposes, litigated in an administrative proceeding where (a) discovery takes place, (b) evidence is heard, (c) factual questions are resolved, (d) a record is made; and (2) whether the proceeding is an adjudicative forum of first jurisdiction, *i.e.*, whether judicial review of the proceeding in district court is an appellate review and not the forum for resolving a controversy on the basis of evidence. *See* Open Records Decision No. 588 (1991).

You state the submitted information concerns a grievance before the commission governed by chapter 158 of the Local Government Code. Section 158.002 of the Local Government Code provides that a county with a population of more than 190,000 may create a civil service system to include all the employees of the county. *See* Local Gov't Code § 158.002. Section 158.009 of the Local Government Code grants a county civil service commission the power to adopt rules regarding disciplinary actions and grievance procedures, among other things. *Id.* § 158.009. You state in conducting a grievance hearing, the commission hears evidence, resolves questions of fact, creates a record, and requires parties to follow Texas law governing civil discovery in its appeal process. Further, you explain, under chapter 158.012, an appeal of a commission decision is made to a district court under the substantial evidence rule. *Id.* § 158.012. However, we note section 158.012 grants only a county employee who, on a final decision by the commission, is *demoted, suspended, or removed* from their position the right to appeal the decision by filing a petition in district court in the county within 30 days after the date of the decision. *See id.* § 158.012(a). In this instance, you do not indicate, and the documents do not reflect, that the requestor has been demoted, suspended or removed from his position with the county. Accordingly, you have not demonstrated the requestor has a right to appeal to a district court under chapter 158.012 in this instance. Consequently, we find you have failed to demonstrate the commission's administrative procedure for resolving grievances is conducted in a quasi-judicial forum, and thus, constitutes litigation for purposes of section 552.103. Therefore, none of the submitted information may be withheld under section 552.103 of the Government Code. As you raise no further exceptions, the submitted information must be released.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

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Enc. Submitted documents

c: Requestor
(w/o enclosures)