



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2013

Ms. LeAnne Lundy
Counsel for the Eanes Independent School District
Rogers, Morris & Grover, LLP
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2013-05491

Dear Ms. Lundy:

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# 483349 (EISD request 3424).

The Eanes Independent School District (the "district"), which you represent, received a request for the browser histories for computers used by two named employees as well as for all computers used to do any work for the district or any subsidiaries. You claim 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 information.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note a portion of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-03164 (2013). In that ruling, we held the district may withhold the browser histories for computers used by the two named employees under section 552.103 of the

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 those records contain substantially different types of information than that submitted to this office.

Government Code. As we have no indication the law, facts, or circumstances upon which the prior ruling was based have changed, the district may continue to rely on Open Records Letter No. 2013-03164 as a previous determination and withhold the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as the law, facts, and circumstances upon which prior ruling is based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we note a portion of the requested information pertaining to the browser histories for computers used by two named employees was created after the previous request for information, and thus, is not encompassed by the prior ruling. Accordingly, we will address your argument for the remaining requested information not subject to Open Records Letter No. 2013-03164.

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 that (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, 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). *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 state the information at issue is related to grievances filed with the district by the requestor and a named individual. You state complaints filed with the district are "litigation" in that the district follows administrative procedures in handling such disputes in which, under the district's public grievance policy, the grievant proceeds through a three-level process. You explain hearing officers investigate the complaint at level one and level two, and the grievant is allowed to be represented by counsel, present favorable evidence to the district, and present witness statements or witnesses to testify on the grievant's behalf. You further explain the district's board of trustees hears the grievance if the grievant appeals to level three. Based on your representations, we find you have demonstrated the district's administrative procedures for public grievances are conducted in a quasi-judicial forum, and thus, constitute litigation for purposes of section 552.103.

You state the named individual filed several grievances with the district prior to its receipt of the instance request, including grievances against the two named employees. Further, you state, and provide supporting documentation demonstrating, the requestor filed an appeal of the district's level two decision regarding her grievance, and the appeal was pending at the time of the district's receipt of the present request for information. Based on your representations, we find the remaining requested information pertaining to the two named employees is related to pending litigation the district was a party to at the time it received the request. Therefore, the district may withhold this information under section 552.103. However, you do not explain, nor do the submitted documents reveal, how the remaining requested information pertaining to the browser histories for all computers used to do any work for the district or any subsidiaries is related to pending litigation. *See* Gov't Code § 552.301(e)(1) (requiring governmental body to explain applicability of raised exception); *see also* Open Records Decision Nos. 551 at 5 (attorney general will determine whether governmental body has reasonably established that information at issue is related to litigation), 511 at 2 (1988) (information "relates" to litigation under statutory predecessor if its release would impair governmental body's litigation interests). Accordingly, the district may not withhold any portion of the remaining information at issue under section 552.103 of the Government Code.

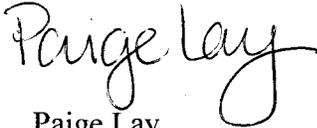
We note that once the information has been obtained by all parties to the pending litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note that the applicability of section 552.103(a) ends when the litigation is concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

In summary, the district may continue to rely on Open Records Letter No. 2013-03164 as a previous determination and withhold the requested information subject to Open Records Letter No. 2013-03164 in accordance with that ruling. The district may withhold the remaining requested information pertaining to the two named employees under section 552.103 of the Government Code. The remaining requested 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 483349

Enc. Submitted documents

cc: Requestor
(w/o enclosures)