



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 14, 2013

Ms. Ellen H. Spalding  
For Eanes Independent School District  
Rogers, Morris & Grover, L.L.P.  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2013-10076

Dear Ms. Spalding:

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# 490166.

The Eanes Independent School District (the "district"), which you represent, received a request for the "documents requested under TPIA 479013," which concerned a previous request by the requestor for five categories of information concerning the education and qualifications of district faculty and staff. We understand you have redacted social security numbers under section 552.147 of the Government Code.<sup>1</sup> We understand you have also redacted personal e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.102 and 552.103 of the Government Code. We

---

<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b).

<sup>2</sup>We note this office issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, you state the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-02004 (2013). In that ruling, we determined the district may withhold the information at issue under section 552.103 of the Government Code because the district was involved in pending litigation at the time it received the previous request for information. In this instance, you inform us the administrative proceeding at issue in the prior ruling was heard by the district's board of trustees prior to the date the district received the instant request for information. Therefore, we find the facts and circumstances on which the previous ruling is based have changed. Thus, you may not rely on Open Records Letter No. 2013-02004 as a previous determination with regard to the information at issue. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was 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). Accordingly, we will address the submitted arguments against release of the information.

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.

---

<sup>3</sup>We assume the "representative sample" of information 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 those submitted to this office.

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).

Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish 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.* Concrete evidence to support a claim litigation is reasonably anticipated may include, for example, the governmental body’s receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. *See* Open Records Decision No. 555 (1990); *see also* Open Records Decision No. 518 at 5 (1989) (litigation must be “realistically contemplated”). In addition, this office has concluded litigation was reasonably anticipated when the potential opposing party hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, or when an individual threatened to sue on several occasions and hired an attorney. *See* Open Records Decision Nos. 346 (1982), 288 (1981). On the other hand, this office has determined if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish litigation is reasonably anticipated. *See* Open Records Decision No. 361 (1983).

You first assert litigation against the district is currently pending or is reasonably anticipated because prior to the district’s receipt of the instant request for information, the requestor filed internal grievances with the district, including a grievance against an attorney for the district. You state complaints filed with the district are “litigation” in that the district follows administrative procedures in handling such disputes. You explain under the district’s parent

grievance policy, the grievant proceeds through a three-level process wherein hearing officers hear the complaint at level one and level two, and the board hears the grievance if the grievant appeals to level three. You state the grievant is allowed to be represented by counsel, present favorable evidence to the district, and present witnesses to testify on the grievant's behalf. Based on your representations, we find you have demonstrated the district's administrative procedures for parent grievances are conducted in a quasi-judicial forum, and thus, constitute litigation for purposes of section 552.103.

As noted above, you inform us the board heard some of the requestor's complaints on December 4, 2012 and March 5, 2013, prior to the district's receipt of the instant request. You contend litigation is pending or reasonably anticipated in these matters because the statute of limitations for the requestor to file an appeal to the Commissioner of Education has not yet run. However, you do not inform us that the requestor has taken any objective steps toward filing any appeal against the district since the completion of the December 4, 2012 and March 5, 2013, hearings. Thus, we find you have failed to demonstrate the district is a party to pending or anticipated litigation relating to these internal grievance proceedings.

You also explain the requestor's girlfriend has filed complaints with the State Bar of Texas against three attorneys associated with the district. You have not explained how complaints filed with the State Bar of Texas are litigation for the purposes of section 552.103. You also have not explained how the district is a party to any litigation involving the State Bar of Texas complaints. You have also provided an e-mail dated March 7, 2013, in which the requestor's girlfriend accuses the district of libel and slander. You state the district interprets this e-mail to be a threat of litigation. However, upon review of your arguments, you have not provided this office with evidence the requestor's girlfriend had taken any objective steps toward filing a lawsuit prior to the date the district received the instant request for information. *See* Gov't Code § 552.301(e)(1)(A); ORD 331. Thus, we find you have failed to demonstrate the district is a party to pending or anticipated litigation relating to the complaints filed against the State Bar of Texas or to a libel and slander lawsuit.

Additionally, you state that prior to the district's receipt of the instant request, the requestor filed three new grievances complaining the district (1) posted STAAR results on the district's website in violation of the Family Educational Rights and Privacy Act, (2) destroyed surveillance video, and (3) violated competitive bidding requirements in relation to the purchase of computer tablets. You further state these grievances remain pending. Thus, we determine the district was a party to pending litigation relating to these three internal grievances at the time it received the instant request for information. You state the requested information concerns telecommunication services for the district and is related to district property, which is the source of the current and threatened litigation against the district. However, upon review, we find you have failed to demonstrate how the submitted information relates to these pending grievances. Accordingly, the district may not withhold the submitted information under section 552.103 of the Government Code.

Section 552.102(b) of the Government Code excepts from disclosure all information in transcripts of a professional public school employee other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102(b); Open Records Decision No. 526 (1989). Thus, with the exception of the employee's name, courses taken, and degree obtained, the district must withhold the transcripts we have marked under section 552.102(b) of the Government Code.<sup>4</sup> However, we find you have failed to demonstrate the remaining information at issue consists of a transcript of a professional public school employee. Accordingly, the district may not withhold the remaining information under section 552.102(b) of the Government Code.

Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the district must withhold the dates of birth you have marked under section 552.102(a) of the Government Code.

We understand the district will redact the information you have marked under section 552.117 of the Government Code pursuant to section 552.024 of the Government Code.<sup>5</sup> We note the remaining documents contain additional information that may be subject to section 552.117.<sup>6</sup> Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of current or former officials or employees only if these individuals made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, to the extent the individual whose information is at issue timely requested confidentiality pursuant to

---

<sup>4</sup>As our ruling is dispositive, we do not address your remaining argument against disclosure of this information.

<sup>5</sup>Section 552.024(c) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code §§ 552.024(c)(2); .117(a).

<sup>6</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

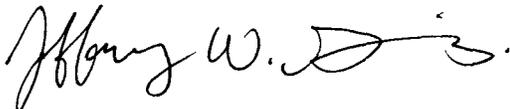
section 552.024, the additional information we have marked must be withheld under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individual at issue did not timely request confidentiality under section 552.024, the district may not withhold the marked information at issue under section 552.117(a)(1).

In summary, the district must withhold (1) the educational transcripts under section 552.102(b) of the Government Code, except for the information that reveals the employees' names, the degrees obtained, and the courses taken; (2) the dates of birth you have marked under section 552.102(a) of the Government Code; and (3) the information we have marked under section 552.117(a)(1) of the Government Code to the extent the employee concerned timely elected confidentiality under section 552.024. The district must release the remaining information.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/dls

Ref: ID# 490166

Enc. Submitted documents

c: Requestor  
(w/o enclosures)