



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 14, 2015

Mr. John M. Muñiz  
Counsel for the Northside Independent School District  
Walsh, Anderson, Gallegos, Green and Treviño, P.C.  
P.O. Box 460606  
San Antonio, Texas 78246

OR2015-07216

Dear Mr. Muñiz:

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# 560149.

The Northside Independent School District (the "district"), which you represent, received a request for six categories of educational records relating to a named student and ten categories of records related to the use of restraint techniques on the named student. We understand you have released information responsive to the portion of the request seeking educational records relating to the named student to the requestor. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See Gov't Code* § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note the district has only submitted training materials to this office. We assume, to the extent any additional information responsive to the portions of the request pertaining to the use of restraint techniques existed on the date the district received the request, the district has released it. If the district has not released any such information, it must do so at this time. *See id.* §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we understand the requestor to contend the district did not timely respond to his request for information. Pursuant to section 552.301(d) of the Government Code, a governmental body must, within ten business days of receiving the request for information, provide the requestor with (1) a written statement the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general. Gov't Code § 552.301(d). You state, and submit documentation showing, the district received the present request on December 19, 2014. You state the district was closed for business between December 22, 2014, and January 2, 2015. This office does not count the date the request was received or any dates the governmental body was closed as business days for the purpose of calculating a governmental body's deadlines under the Act. You further state, and provide documentation demonstrating, the district sought clarification of the request on January 14, 2015 and received clarification from the requestor on January 21, 2015. *See id.* § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). Accordingly, the district's ten-business-day deadline was February 4, 2015. The envelope in which the district provided the information required by subsection 552.301(b) was meter-marked February 4, 2015. *See Gov't Code* §§ 552.301(b), .308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Additionally, the district's letter to this office contains a notation the requestor was copied on the letter via e-mail on that same date. We understand the requestor to assert he was not properly notified of the district's request for a ruling from this office as required by section 552.301(d). Whether the district actually sent the requestor a copy of the district's letter to our office by February 4, 2015, is a question of fact. This office is unable to resolve factual disputes in the open records ruling process. *See Open Records Decision Nos.* 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See ORD* 552 at 4. The submitted information reflects the requestor was copied on the district's letter to our office concurrent with the timely delivery to our office. Thus, we conclude the district complied with the requirements of section 552.301(d).

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, orig. proceeding); *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 assert litigation against the district is currently pending because, concurrent with the district’s receipt of the instant request for information, the requestor filed an internal grievance with the district. You state grievances filed with the district are “litigation” in that the district follows administrative procedures in handling such disputes. You further explain, and have provided documentation showing, the district’s policy includes a multi-level process wherein various district administrators hear the grievance before it is ultimately heard by the district’s board of trustees. You state during these hearings the grievant is allowed to be represented by counsel and present evidence to the district. You also inform us the grievant must complete the district’s grievance process in order to exhaust her administrative remedies before she can file suit in court. Based on your representations, we find you have demonstrated the district’s administrative procedures for disputes are conducted in a quasi-judicial forum, and thus, constitute litigation for purposes of section 552.103.

You inform us the requestor filed a grievance with the district concurrent with the district’s receipt of the instant request. Thus, you assert, on the date the district received the request for information, litigation against the district was pending. You contend the information at issue is related to that litigation. Based on your representations and our review, we find the information at issue is related to litigation that was pending against the district on the date

the district received the request for information. Therefore, the district may withhold the submitted information under section 552.103(a) of the Government Code.

Generally, however, 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. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 560149

Enc. Submitted documents

c: Requestor  
(w/o enclosures)