



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 28, 2016

Ms. Sierra D. Fisher
Counsel for Beaumont Independent School District
Karczewski Bradshaw L.L.P.
315 North Church Street
Nacogdoches, Texas 75961

OR2016-14679

Dear Ms. Fisher:

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# 615978.

The Beaumont Independent School District (the "district"), which you represent, received a request for information pertaining to a named student; math pacing guides, lesson planning documents, or resources; information pertaining to staff development for the math department during a specified time period; and information pertaining to PDAS training scheduling during a specified time period. You state the district is releasing some of the requested information. 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 representative sample of information.¹

Section 552.103 of the Government Code provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which 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 that those records contain substantially different types of information than that submitted to this office.

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). The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception applies 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 requested information 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. The governmental body must meet both parts of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

This office has long held that "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, and provide documentation showing, the requestor has filed a grievance against the district on behalf of the named student. You explain that grievances filed with the district are "litigation" in that the district follows administrative procedures in handling such disputes. We note the district's policy includes a three-level process wherein various administrators hear the grievance at Levels I and II, and the district's board of managers hears the grievance if the grievant appeals to Level III. We also note during these hearings the grievant is allowed to be represented by counsel, present favorable evidence to the district, and present witnesses. We further note a record of the proceeding made by audio

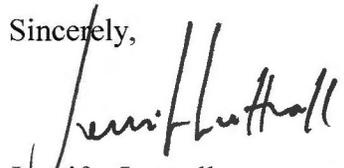
or audio/video recording or a court reporter is required. You state the grievant must complete the district's grievance process in order to exhaust his administrative remedies before he can file suit in court. Based on your representations and our review, we find the district's administrative procedure for disputes, as described above, is conducted in a quasi-judicial forum. Thus, the district's administrative procedure for disputes constitutes litigation for purposes of section 552.103. You state, and provide documentation demonstrating, the requestor filed the initial grievance on behalf of the named student simultaneously with the request for information. Thus, we determine the district was involved in pending litigation at the time it received the request for information. You state the submitted information relates to the pending litigation against the district. Upon review of your arguments and the information at issue, we find the submitted information is related to litigation involving the district that was pending on the date the request was received. Accordingly, we find the district may withhold the submitted information under section 552.103 of the Government Code.

We note that once the information has been obtained by all parties to the pending litigation, 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.

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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 615978

Enc. Submitted documents

c: Requestor
(w/o enclosures)