

April 29, 2024

The Honorable Ken Paxton  
Attorney General of Texas  
Attn: Open Records Division  
P.O. Box 12548  
Austin, Texas 78711-2548

Re: TEA PIR# 68300

Dear General Paxton:

On April 15, 2024, the Texas Education Agency (TEA) received a public information request from Erin Anderson seeking information concerning the investigation of a named educator. A portion of the responsive information will be released to the requestor. However, pursuant to section 552.301(a) of the Government Code, TEA requests an opinion regarding the status of the remaining responsive information sought in the enclosed request for information.<sup>1</sup> As required by section 552.301(e) of the Government Code, this letter is submitted for the purpose of providing: 1) written comments explaining why section 552.103 of the Government Code applies to the requested information; and 2) a representative sample of the requested information at issue.

Section 552.103 of the Government Code provides in part the following:

- (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 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.

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<sup>1</sup>Pursuant to the previous determination issued in Open Records Letter No. 2020-03195 (2020), TEA is withholding from public disclosure all information and materials subpoenaed or compiled by TEA in connection with an investigation described by section 21.062(a) of the Education Code under section 552.101 of the Government Code. Additionally, to the extent the public information request encompasses information deemed confidential under the Family Educational Rights and Privacy Act (FERPA), TEA is withholding such information from disclosure and is not seeking an opinion on the applicability of FERPA to that information. Information protected by FERPA has been redacted from the enclosed copy of requested information.

Gov't Code § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. See *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. See Open Records Decision No. 551 at 4 (1990).

The submitted information is related to an open investigation of allegations that an educator engaged in inappropriate conduct. The alleged misconduct may require TEA to file a petition for sanctions against the educator pursuant to the provisions of the Education Code and title 19 of the Texas Administrative Code. See Educ. Code §§ 21.031(a) (TEA shall regulate and oversee standards of conduct of public school educators), 21.041(b) (TEA shall propose rules providing for disciplinary proceedings); 19 T.A.C. §§ 247.2, 249.15. If the educator files an answer to the petition, the matter will be referred to the State Office of Administrative Hearings for a contested case proceeding. See 19 T.A.C. § 249.18. These proceedings are governed by the Administrative Procedure Act (APA), chapter 2001 of the Government Code. See Educ. Code § 21.041(b)(7); 19 T.A.C. § 249.4; Open Records Decision No. 588 (1991) (contested case under APA constitutes litigation for purposes of statutory predecessor to section 552.103). For these reasons, TEA believes that litigation was reasonably anticipated on the date TEA received the request for information. Furthermore, because the responsive information consists of documents compiled for the purpose of investigating the alleged educator misconduct, the information is related to the anticipated litigation. Therefore, TEA asserts the responsive information should be withheld from public disclosure at this time under section 552.103 of the Government Code.

TEA also asks your office to issue a previous determination authorizing TEA to withhold from public disclosure information concerning open investigations of alleged educator misconduct without the necessity of seeking an opinion from your office. See Gov't Code § 552.301(a), (f); see *also* Open Records Decision No. 673 (2001). Your office has issued 249 rulings since January 2019 permitting TEA to withhold information not previously viewed by the educator at issue concerning pending investigations of alleged educator misconduct as anticipated litigation under section 552.103 of the Government Code. See Open Records Letter Nos. 2024-12929 (2024), 2024-11152 (2024), 2024-10160 (2024), 2024-08600 (2024), 2024-08229 (2024).

As required by section 552.301(e-1) of the Government Code, a copy of this letter is being provided to the requestor.

The Honorable Ken Paxton  
April 29, 2024  
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If you need additional information, please contact me at (512) 463-9720.

Sincerely,

Meitler,

Montgomery

Digitally signed by Meitler,  
Montgomery  
Date: 2024.04.29  
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Montgomery Meitler  
Deputy General Counsel for Public Information  
Office of General Counsel  
Texas Education Agency

Enc.

c: Erin Anderson  
Texas Scorecard  
*Via email*  
(w/o enclosures)