



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 30, 1995

Mr. Ross J. Radcliffe  
Johnson, Radcliffe & Petrov  
Paragon Center One  
450 Gears Road, Suite 700  
Houston, Texas 77067

OR95-022

Dear Mr. Radcliffe:

You represent Forest Cove Municipal Utility District (the "district"). You have asked if the district is required to disclose to the public certain records under the Texas Open Records Act, chapter 552 of the Government Code. That request was assigned ID# 29324.

The district received a request to examine tax records, bank statements, and tax payment and deposit records from 1988 to the date of the request. You contend that the requested records are excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *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 (1990) at 4.

You indicate that the tax assessor/collector for the district has been indicted for theft and fraud for allegedly stealing more than \$100,000 from the district and three other governmental entities. You contend that the district may have to sue the defendant, his bank, and his bonding company to be reimbursed for its losses. You state that the district and the other entities are conducting a joint investigation "to determine the extent of losses suffered by the districts and whether any civil actions against various entities are viable" and that, "[d]epending on the extent of the damages (losses), and the acceptance of liability by the bonding company, the District may face a decision of filing a civil action to recover the District's losses." As to the records requested, you state that the

request is broad enough to include records that, if released, "would potentially compromise the District's investigation and pursuit of their claims."<sup>1</sup>

You seek to withhold from disclosure all of the district's tax and related financial records for a six year period, and have submitted to this office for review representative samples of the district's tax records, bank statements, checks, and deposits. We note that chapter 552 specifically provides that information relating to the receipt or expenditure of public funds, or to estimates of the need for or expenditure of public funds or taxes, is generally public information. Gov't Code § 552.022(3), (5). Section 25.01 of the Tax Code provides that "appraisals and supporting data shall be public records." Additionally, section 25.195 of the Tax Code provides that a property owner or his designated agent has a right to inspect his own appraisal records, along with supporting data and schedules used in the appraisal. See Open Records Decision No. 500 (1988).

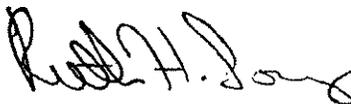
In any event, the district has not shown that litigation is reasonably anticipated. The district has argued that it may need to bring a lawsuit at a later date. In Open Records Decision No. 557 (1990) at 6, this office determined that litigation was not reasonably anticipated where a university was considering whether to bring charges against various individuals. We stated:

While the university may contemplate bringing action against persons engaging in harassment or conspiracy, it has not yet done so. Civil litigation is thus neither pending nor reasonably anticipated.

Additionally, it is not clear that all of the district's tax and financial records for the entire six year period, including tax roll information, are related to anticipated litigation. Since the district has not met its burden of showing the applicability of section 552.103(a), this information may not be withheld from disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

---

<sup>1</sup>There is no indication that the district attorney seeks to have these records withheld from disclosure. Therefore, we will address section 552.103(a) in the context of the lawsuit the district anticipated bringing against the former tax assessor/collector rather than the pending criminal litigation.

RHS/KHG/rho

Ref.: ID# 29324

Enclosures: Submitted documents

cc: Mr. John Novier  
1310 Brooktrail Drive  
Kingswood, Texas 77339-3459  
(w/o enclosures)