



June 9, 1999

Ms. Catherine Jane Alder
Brown, Herman, Dean, Wiseman, Liser & Hart, L.L.P.
200 Fort Worth Club Building
306 West 7th Street
Fort Worth, Texas 76102-4905

OR99-1605

Dear Ms. Alder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124878 and re-designated as ID# 126746.

The Tarrant County Appraisal District (the “district”), which you represent, received a request for information related to a specific property exemption dispute. You claim that the responsive information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. You have submitted a representative sample of the subject information to our office for review.¹

Section 552.103(a), the “litigation exception,” excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information “relates” to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong showing 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). You have supplied pleadings in the case styled *Veteran's Memorial Inc. v. Tarrant Appraisal District*, cause number 096-158303-95, filed in the 96th Judicial District Court of Tarrant County. You represent that this case is pending, and provide pleadings in support of this representation. The requestor also acknowledges that litigation is pending. Based on the documentation submitted and the

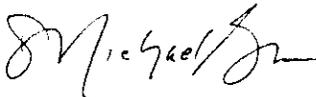
¹We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

representations made we conclude that you have met the first prong of the relevant test. Although the requestor argues that portions of the responsive information "are not part of the litigation currently pending," from our review of the arguments and pleadings presented and the submitted information, we conclude that the responsive information *relates* to this litigation. Information may therefore be withheld under section 552.103 of the Government Code.

Note however that this exception does not apply to information that the opposing party to litigation has previously had access to. Absent special circumstances, once information has been obtained by opposing parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). For example, exhibit E includes an item of correspondence addressed to the opposing party that must be released. We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

As the above discussion disposes of all the subject information we shall not address the exceptions raised under other provisions of the Government Code. 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 regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 126746 (formerly ID# 124878)

Encl. Submitted documents

cc: Ms. Kelley B. Hill
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(w/o enclosures)