



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 24, 2011

Mr. Braden W. Metcalf
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201

OR2011-02752

Dear Mr. Metcalf:

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# 410073 (Client ID# 46868).

The Tarrant Appraisal District (the "district"), which you represent, received a request for all information presented to the Appraisal Review Board by any parties involved in a specified hearing. You claim that 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.

Section 552.103 of the Government Code provides:

(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). The governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception 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 of the receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *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). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You indicate that, prior to the receipt of the instant request for information, a lawsuit styled *Investors Warranty of America, Inc. and Enterprise Centre Operating Associates, LP (Enterprise Center) v. Tarrant Appraisal District* was filed in the 348th Judicial District Court of Tarrant County, Texas under Cause No. 348-247991-10. We, therefore, agree that litigation was pending on the date the district received the request for information. You further state the submitted information is related to the pending litigation. Based on our review and your representation, we agree the submitted information is related to the pending litigation for purposes of section 552.103(a). Therefore, the district may withhold the submitted information under section 552.103 of the Government Code.

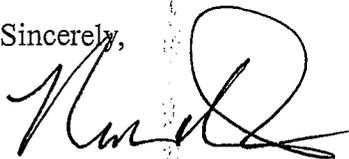
We note, however, that some of the information at issue reflects on its face that it has been seen by or provided to the one of the opposing parties in the pending litigation. Once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest 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 the opposing parties in 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 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nneka Kanu', with a large, stylized initial 'N' and 'K'.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/vb

Ref: ID# 410073

Enc. Submitted documents

c: Requestor
(w/o enclosures)