



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 22, 2012

Ms. Janet M. Spugnardi
For Trophy Club Municipal Utility District No. 1
Messer, Campbell & Brady, L.L.P.
6351 Preston Road, Suite 350
Frisco, Texas 75034

OR2012-04229

Dear Ms. Spugnardi:

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# 448829.

The Trophy Club Municipal Utility District No. 1 (the "district"), which you represent, received a request for twelve categories of information pertaining to a specified waste water/sewage back-up. 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 We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 state or a political subdivision is or may be a party or to which an officer or

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 those records contain substantially different types of information than that submitted to this office.

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.

Id. § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for information and (2) the information at issue 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, 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 inform us, and provide documentation showing, that the district received the request for information after a lawsuit styled *Mary Jean Carter v. State Farm Lloyds Insurance Company and Trophy Club Municipal District No. 1*, Cause No. 2011-40774-362, was filed in the District Court of Tarrant County. In this instance, the requestor argues that the district may not claim section 552.103 because the district waived its right to assert that it is a party to this pending litigation by filing a plea to the jurisdiction. However, the requestor does not inform us, and there is no indication, that the Tarrant County District Court granted this plea for the jurisdiction and dismissed the plaintiff's suit before the district received the request for information. Accordingly, we find litigation involving the district was pending when it received the request. You state the submitted information is related to the subject matter of the pending litigation. Based on your representations and our review, we agree this information is related to the pending litigation for purposes of section 552.103. Accordingly, the district may withhold the submitted information under section 552.103 of the Government Code.

However, we note 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* ORD 551 at 4-5. Therefore, once the information at issue has been obtained by all parties to the litigation through discovery or otherwise, a section 552.103(a) interest no longer exists as to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We also note the applicability of section 552.103(a)

ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

Ref: ID# 448829

Enc. Submitted documents

c: Requestor
(w/o enclosures)