



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 6, 2014

Mr. James R. Evans, Jr.
Attorney for the Rusk County Appraisal District
Hargrove & Evens, LLP
4425 Mopac South, Building 3, Suite 400
Austin, Texas 78735

OR2014-03916

Dear Mr. Evans:

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# 515907.

The Rusk County Appraisal District (the "district"), which you represent, received a request for the formal tax protest submitted by Luminant Generation Company, LLC ("Luminant") in response to the district's 2013 proposed valuation of a specified property, the district's responses to the tax protest, agendas and/or minutes which discuss the tax protest, records related to a specified hearing regarding the tax protest, and records summarizing the final resolution of the tax protest. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.110 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Luminant and Pritchard & Abbott, Inc. Accordingly, you state and provide documentation showing, you have notified these third parties of the request for information and of their right to submit arguments to this office as to why the requested information should not be released. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the

circumstances). We have received comments from Luminant. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Section 552.103 of the Government Code provides in relevant part as follows:

(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 purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See id.* § 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) 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 the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.— Austin 1997, orig. proceeding); *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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state Exhibits B-1 and B-2 relate to pending litigation. You state, and provide documentation showing, that prior to the date of the request, the district was involved in a pending lawsuit styled *Luminant Generation Company, LLC v. Rusk Appraisal District*, Cause No. 2013-301. You state the information at issue is related to the pending lawsuit. Based on your representations and our review of the submitted documentation, we find litigation was pending when the district received this request for information. Furthermore,

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.

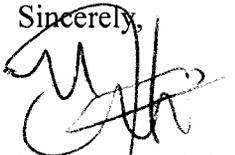
we find the information at issue is related to this pending lawsuit. Accordingly, the district may withhold Exhibits B-1 and B-2 under section 552.103 of the Government Code.²

We note, however, the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. *See* ORD 551 at 4-5. Thus, if the opposing party has seen or had access to information relating to the pending litigation through discovery or otherwise, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We also note the applicability of section 552.103 ends once the related litigation concludes. *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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 515907

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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