



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2014

Ms. Lynn B. Humphries
Counsel for Lerin Hills Municipal Utility District
Allen, Boone, Humphries, Robinson, L.L.P.
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027

OR2014-06482

Dear Ms. Humphries:

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# 520247.

The Lerin Hills Municipal Utility District (the "district"), which you represent, received a request for "all agendas, notices of meetings held by the Board of Directors of [the district] and proof of posting of said notices" from the district's creation to the date of the request. You claim the requested information is excepted from disclosure under section 552.103 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

Initially, we note the information at issue includes notices and agendas of public meetings held by the district's board of directors. The notices and agendas of a governmental body's public meetings are specifically made public under provisions of the Open Meetings Act,

¹Although you also raise section 552.022 of the Government Code, we note section 552.022 is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are made confidential under the Act or other law. *See* Gov't Code § 552.022.

²We 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 that those records contain substantially different types of information than that submitted to this office.

chapter 551 of the Government Code. *See* Gov't Code §§ 551.041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). Accordingly, section 551.041 is applicable to the requested agendas and notices. Although you raise section 552.103 of the Government Code as an exception to disclosure of this information, we note that as a general rule, the exceptions to disclosure found in the Act are not applicable to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the district must release the agendas and notices of public meetings pursuant to section 551.041 of the Government Code.

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 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. *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). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

You state, and provide documentation showing, that prior to the date the district received the instant request for information, the district was engaged in two lawsuits with the requestor's client. Based on your representations and our review, we determine litigation was pending when the district received the request for information. Additionally, we agree the proofs of posting relate to the pending litigation. Therefore, we conclude that section 552.103 of the

Government Code is applicable to the proofs of posting. As such, the district may withhold this information under section 552.103 of the Government Code.

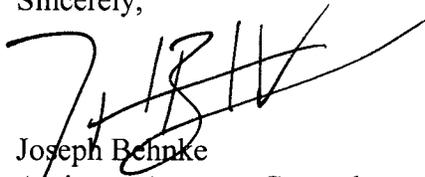
We note, however, once the information at issue has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any information obtained from or provided to all other 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).

In summary, the district must release the notices and agendas of public meetings under section 551.041 of the Government Code. The district may withhold the proofs of posting under section 552.103 of the Government Code.

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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 520247

Enc. Submitted documents

c: Requestor
(w/o enclosures)