



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 30, 2014

Mr. Robert Schell
Assistant Director General Counsel
North Texas Tollway Authority
P.O. Box 260729
Plano, Texas 75026

OR2014-19693

Dear Mr. Schell:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. This request was originally received by the Open Records Division (“ORD”) of this office and assigned ID# 540562. Preparation of the ruling has been assigned to the Opinion Committee.

The North Texas Tollway Authority (the “authority”) received a request for all toll records pertaining to a specified license plate number. You claim the requested information is excepted from disclosure under sections 552.101, 552.103, 552.136, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information you have submitted as Exhibit B.¹

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 that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Tex. Att’y Gen. ORD-499 (1988) at 6, ORD-497 (1988) at 4. 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.

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.

TEX. GOV'T CODE ANN. § 552.103(a), (c) (West 2012). 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); Tex. Att'y Gen. ORD-638 (1996) at 2 (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 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.); Tex. Att'y Gen. ORD-551 (1990) at 4. A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). Tex. Att'y Gen. ORD-677 (2002) at 2.

You inform us, and provide documentation showing, that litigation styled *North Texas Tollway Authority v. Abbott*, cause number D-1-GN-13-003614, was pending in a Travis County district court on the date the authority received the request for information. You assert the information at issue is related to the pending litigation. Based on your representations and our review of the submitted information, we find that the requested information is related to litigation that was pending when the request for information was received. Accordingly, the authority may withhold the information at issue under section 552.103(a) 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* Tex. Att'y Gen. ORD-551 (1990) at 4–5. 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* Tex. Att'y Gen. ORD-349 (1982) at 2, ORD-320 (1982) at 1. Accordingly, information that has either been obtained from or provided to all parties to the pending litigation is not excepted

²As our ruling regarding section 552.103(a) is dispositive, we do not address your other arguments to withhold this information.

from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the related litigation concludes. *See* Tex. Att'y Gen. Op. No. MW-575 (1982) at 2; Tex. Att'y Gen. ORD-350 (1982) at 3.

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,



Charlotte M. Harper
Assistant Attorney General
Opinion Committee

CMH/sdk

Ref: ID# 540562

Enc. Submitted documents

c: Requestor
(w/o enclosures)