



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 5, 2015

Ms. Stefanie Albright  
Counsel for the Chambers-Liberty Counties Navigation District  
Lloyd Gosselink Rochelle & Townsend, P.C.  
816 Congress Avenue, Suite 1900  
Austin, Texas 78701

OR2015-16166

Dear Ms. Albright:

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# 574308.

The Chambers-Liberty Counties Navigation District (the "district"), which you represent, received a request for (1) the date of notice of a specified meeting; (2) specified documents; (3) a specified audio recording; and (4) any documents provided to district commissioners regarding the requestor and two named entities. You claim the submitted information is exempted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you assert, with respect to the first category of the request, the requestor has asked the district to answer a question. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume the district has made a good faith effort to do so.

Next, Exhibit G consists of an audio recording of a meeting of the district's commissioners conducted in accordance with the Texas Open Meetings Act, chapter 551 of the Government Code. *See* Gov't Code §§ 551.001-.146. Section 551.022 of the Government Code expressly provides that "[t]he minutes and recordings of an open meeting are public records

and shall be available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee." *Id.* § 551.022. Accordingly, we find section 551.022 is applicable to the submitted recording. 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 Exhibit G in its entirety to the requestor. Gov't Code § 551.022; *see also* Open Records Decision No. 221 (1979) (board minutes of school district not excepted under predecessor to section 552.103).

Section 552.103 of the Government Code provides, in relevant part, the following:

(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). A governmental body claiming section 552.103 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 showing (1) litigation is pending or reasonably anticipated on the date the governmental body received the request, 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).

You explain, and submit supporting documentation demonstrating, a lawsuit had been filed against the district prior to the date the district received the present request for information. Further, you explain, and we agree, the information at issue is related to the pending litigation. Based on your representations and our review, we find you have demonstrated Exhibit H is related to litigation that was pending against the district at the time the district received the request for information. Therefore, we find the district may withhold Exhibit H under section 552.103(a) of the Government Code.

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 id.* Thus, if the opposing party has seen or had access to information relating to the litigation through discovery or otherwise, there is no interest in withholding such information from public disclosure under section 552.103(a). *See* Open Records Decision Nos. 349 (1982), 320 (1982). We also note the applicability of section 552.103 ends once the litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the district must release Exhibit G in its entirety pursuant to section 551.022 of the Government Code. The city may withhold Exhibit H under section 552.103(a) 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](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,



Mili Gosar  
Assistant Attorney General  
Open Records Division

MG/akg

Ref: ID# 574308

Enc. Submitted documents

c: Requestor  
(w/o enclosures)