



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 26, 2016

Ms. Kristen O. Fancher
Counsel for the Lone Star Groundwater Conservation District
Smith, Robertson, Elliott & Douglas, L.L.P.
221 West Sixth Street, Suite 1100
Austin, Texas 78701

OR2016-09360

Dear Ms. Fancher:

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# 607142.

The Lone Star Groundwater Conservation District (the "district"), which you represent, received four requests from different requestors for a specified letter and related supporting documentation pertaining to a complaint made against a named district official. The fourth requestor also seeks all information related in any way to the investigation of the specified complaint. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, and 552.107 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹Although you also raise Texas Rule of Evidence 503, as you acknowledge, the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code is section 552.107 of the Government Code. *See* ORDs 677 (2002), 676 at 1-2.

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

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 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 from disclosure under section 552.103(a).

You state, and provide documentation demonstrating, that a lawsuit styled *City of Conroe, et al. v. Richard Tramm, et al.*, Cause No. 15-08-08942, was pending in the 284th Judicial District Court of Montgomery County, Texas, prior to the district's receipt of this request for information. Based on this representation and our review, we find the district was a party to pending litigation when it received the request for information. You further state the information at issue relates to the pending lawsuit because the named official who is the subject of the complaint to which the submitted information relates is also a named party in the litigation at issue, and "it appears that the [d]istrict is likely to call [the named official] as a witness in the lawsuit, and the information contained in the documents could be used by any of the [p]laintiffs on the character and credibility of [the named official]." Furthermore, you state the lawsuit is based on the purported interests of groundwater users served by the district and the information at issue relates to documents generated by two former employees based on the purported interests of groundwater users served by the district. Based on these representations, the submitted documentation, and our review of the information at issue, we find litigation was pending when the district received this request for information and the information at issue is related to the pending litigation for the purposes of section 552.103.

Therefore, the district may withhold the submitted information under section 552.103 of the Government Code.³

However, once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

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# 607142

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)

³As our ruling is dispositive for this information, we need not consider your remaining arguments against its disclosure.