



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 29, 2005

Ms. Darlene Shahan
District Manager
Kinney County Groundwater Conservation District
P.O. Box 369
Brackettville, Texas 78832

OR2005-10683

Dear Ms. Shahan:

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# 237016.

The Kinney County Groundwater Conservation District (the "district") received a request for e-mail communications between the district's general manager or any other employee and any district board member during a specified time interval. You inform us that the district is releasing some of the requested information. You have submitted information that you claim is excepted from disclosure under sections 552.102, 552.103, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.103 of the Government Code provides in 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 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 that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for the information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

You assert that the submitted information is related to pending litigation to which the district is a party. You have submitted documentation demonstrating that the district was a party to the litigation on the date of its receipt of this request for information. Based on your representations, the submitted documentation, and our review of the information at issue, we conclude that the district may withhold the submitted information at this time under section 552.103 of the Government Code.¹

In reaching this conclusion, we assume that the opposing parties in the pending litigation have not seen or had access to the submitted information. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information that relates to litigation through discovery procedures. *See Open Records Decision No. 551 at 4-5 (1990).* If the opposing parties have seen or had access to information that relates to litigation through discovery or otherwise, then there is no interest in withholding the information from public disclosure under section 552.103. *See Open Records Decision Nos. 349 (1982), 320 (1982).* We also note that 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 records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

¹As we are able to make this determination, we do not address your other arguments against disclosure.

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

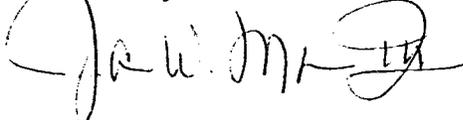
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 237016

Enc: Submitted documents

c: Ms. Sheridan L. Gilkerson
Jackson, Sjoberg, McCarthy & Wilson, L.L.P.
711 West 7th Street
Austin, Texas 78701-2785
(w/o enclosures)