



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2009

Ms. Julie Fort
Strasburger & Price, LLP
2801 Network Boulevard Suite 600
Frisco, Texas 75034

OR2009-17076

Dear Ms. Fort:

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# 363008.

The Plano Economic Development Board, Inc. (the "board"), which you represent, received a request for an attachment to the July 1991 minutes. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

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 has the burden of providing relevant facts and documentation sufficient to establish the applicability of section 552.103 to the information that it seeks to withhold under this exception. 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 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 state, and have provided pleadings demonstrating, that the board was a party to pending litigation with the requestor on the date of the board's receipt of this request for information. You also inform us, and provided an affidavit stating, that the information at issue is related to the pending litigation. Based on your representations, the submitted pleadings and affidavit, and our review of the information at issue, we find that this information is related to pending litigation to which the board was a party on the date of its receipt of this request. We therefore conclude that the board may withhold the submitted information under section 552.103 of the Government Code.¹

We note that the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See Open Records Decision No. 551 at 4-5 (1990).* Thus, if the opposing party has seen or had access to information relating to litigation through discovery or otherwise, then there is no interest in withholding such 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).*

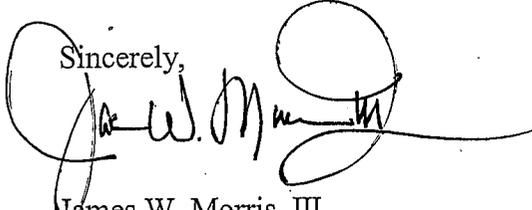
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free,

¹As we are able to make this determination, we do not address your claim under section 552.107 of the Government Code.

at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'James W. Morris, III'. The signature is stylized with large loops and a long horizontal flourish extending to the right.

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

JWM/cc

Ref: ID# 363008

Enc: Submitted documents

c: Requestor
(w/o enclosures)