



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2010

Mr. James R. Evans, Jr.
Hargrove & Evans, L.L.P.
For Caldwell County Appraisal District
Building 3, Suite 400
4425 Mopac South
Austin, Texas 78735

OR2010-09342

Dear Mr. Evans:

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# 383982.

The Caldwell County Appraisal District and the Caldwell County Appraisal Review Board (collectively the "county") received a request for sworn affidavits or other document that all parties signed before a specified hearings. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and 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). A 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 (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, no pet.); *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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, the county received the request for information after two appeal lawsuits were filed in the Caldwell County district court by aggrieved property owners. Based on your representation and our review, we conclude litigation involving the county was pending when the county received the request. You also state the submitted information is related to the pending litigation because it pertains to the Appraisal Review Board hearings which form the bases of the lawsuits. Based on your representations and our review, we find the submitted information is related to the pending litigation for the purposes of section 552.103. Accordingly, we find the submitted information may be withheld under section 552.103 of the Government Code.

We note, however, that some of the information at issue reflects on its face that it seen by or provided to the requestor, who is one of the opposing parties in the pending litigation. 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* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); *see also* 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, 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 "Tamara Wilcox". The signature is fluid and cursive, with the first name "Tamara" written in a larger, more prominent script than the last name "Wilcox".

Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 383982

Enc. Submitted documents

c: Requestor
(w/o enclosures)