



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 27, 2011

Mr. Richard Hamala  
Tiemann, Shahady & Hamala, P.C.  
102 North Railroad Avenue  
Pflugerville, Texas 78660

OR2011-15780

Dear Mr. Hamala:

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# 434566.

The Liberty Hill Water Supply Corporation (the "corporation"), which you represent, received a request for "the ballot that was voted on [the requestor's] behalf for the acquisition of the water department[.]" You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides in 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 has the burden of providing relevant facts and documents to show that 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 receives the request for information, and (2) the information at issue is related to that litigation. *See Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *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). The governmental body must satisfy both prongs of this test for information to be excepted under section 552.103(a).

You state the submitted information consists of a proxy and ballot form for a board of directors election at an annual members meeting that was called by the corporation's board of directors. You provide documentation showing that, prior to the corporation's receipt of the present request for information, a lawsuit styled *City of Liberty Hill, Texas v. Liberty Hill Water Supply Corporation*, Cause No. 11-850-C26, was filed and is currently pending in the 26<sup>th</sup> District Court of Williamson County, Texas. Therefore, we agree litigation was pending on the date the district received the present request for information. Furthermore, we understand you to claim the submitted information relates to the substance of this litigation. You state, and the documentation shows, the corporation was enjoined from holding its annual members meeting. Consequently, the board of directors election has not occurred. We also find the submitted information relates to the pending litigation for purposes of section 552.103. Therefore, the corporation may withhold the submitted information under section 552.103 of the Government Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

We note, however, 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* ORD 551 at 4-5. 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 note the applicability of section 552.103(a) ends when the litigation has concluded or is no longer anticipated. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2 (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](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 cursive script, appearing to read "Mack T. Harrison".

Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

Ref: ID# 434566

Enc. Submitted documents

c: Requestor  
(w/o enclosures)