



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 5, 2013

Mr. Kyle T. Gray  
Counsel for the Tarrant Regional Water District  
Pope, Hardwicke, Christie, Schell, Kelly & Ray, L.L.P.  
500 West 7th Street, Suite 600  
Fort Worth, Texas 76102

OR2013-15487

Dear Mr. Gray:

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# 498549.

The Tarrant Regional Water District (the "district"), which you represent, received a request for all e-mails, letters, memoranda, and other correspondence and documents sent to and from each of the five district directors between May 1, 2013 and May 15, 2013.<sup>1</sup> You state you will make some of the requested information available to the requestor upon his response to a cost estimate. You claim the remaining 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 representative sample of information.<sup>2</sup>

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<sup>1</sup>You inform us you sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information at issue. 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, orig. proceeding); *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 a lawsuit styled *Monty Bennett v. Tarrant Regional Water District, A Water and Control Improvement District*, Cause No. 153-264899-13, in which the plaintiff seeks injunctive relief against the district for alleged violations of the Texas Open Meetings Act in the planning of the proposed Integrated Pipeline Project, was pending in the 153rd District Court in Tarrant County prior to the district's receipt of this request for information. You state the information at issue is related to that pending litigation. Based on your representations, our review of the pleadings you provided, and our review of the submitted information, we find that the information at issue is related to litigation, to which the district was a party, that was pending when the request for information was received. We therefore conclude the district may withhold the information at issue under section 552.103 of the Government Code.

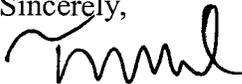
However, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See Open Records Decision Nos. 349 (1982), 320 (1982).* Thus, information that has either been

obtained from or provided to all parties to 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 been 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/dls

Ref: ID# 498549

Enc. Submitted documents

c: Requestor  
(w/o enclosures)