



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 23, 2014

Mr. Jason McCoy
Counsel for Mustang Special Utility District
Rapier & Wilson, P.C.
1333 West McDermott Drive, Suite 100
Allen, Texas 75013

OR2014-08907

Dear Mr. McCoy:

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# 523804.

The Mustang Special Utility District (the "district"), which you represent, received a request for information pertaining to the real and personal property of the district and appraisals, brokers' opinions of value, and engineering studies pertaining to two specified types of certificates. You claim the submitted 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 relevant 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 claiming section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (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 that 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 provide documentation showing, prior to the district's receipt of the instant request, a lawsuit styled *Providence Village v. Providence Village Water Control and Improvement District of Denton County*, Cause No. 201160876-393, was filed and is currently pending against the district in the 393rd District Court of Denton County, Texas. Therefore, we agree litigation was pending on the date the district received the present request for information. You assert the submitted information pertains to the substance of the lawsuit claims, in which the Town of Providence Village (the "town") seeks to void a contract between the district and Providence Village Water Control and Improvement District ("Providence"). You state the contract at issue involves property within the town's corporate limits that is related to the district's Certificates of Convenience and Necessity ("CCNs"), the district's agreement with Providence to maintain Providence's water and sanitary sewer system (the "system"), and transfer of the system to the district. You argue the submitted information contains information concerning the valuation of components of the system and the CCNs that support the contract at issue and the system. Based on your representations and our review, we find the information at issue is related to the pending litigation. Therefore, we conclude the district may withhold the submitted information under section 552.103 of the Government Code.

Generally, 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 MW575 (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, 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,

A handwritten signature in black ink, appearing to read "Paige Thompson". The signature is written in a cursive, flowing style.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 523804

Enc. Submitted documents

c: Requestor
(w/o enclosures)