



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 6, 2016

Ms. Lauren Kalisek
Counsel for the Sabine River Authority
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701

OR2016-12794

Dear Ms. Kalisek:

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# 612982.

The Sabine River Authority (the "authority"), which you represent, received a request for (1) all correspondence between any board member and a named individual during a specified time period and (2) all correspondence between the named individual and any authority employee referring to specified topics during a specified time period. You state the authority will release information responsive to the second portion of the request and some information responsive to the first portion of the request. 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 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 that (1) litigation is 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, orig. proceeding); *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 meet both prongs of this test for information to be excepted under section 552.103(a). See ORD 551 at 4.

You state, and provide documentation demonstrating, prior to the authority's receipt of the instant request, a lawsuit styled *City of Dallas v. Abney*, Cause No. D150045-C, was filed against members of the authority's board of directors in their official capacities and is currently pending in the 280th Judicial District Court of Orange County, Texas. You further state, and provide documentation demonstrating, prior to the authority's receipt of the instant request, a lawsuit styled *City of Dallas v. Sabine River Authority of Texas*, Cause No. D-1-GN-15-000398 was filed and is currently pending in the 53rd Judicial District Court of Travis County, Texas. Therefore, we agree litigation was pending on the date the authority received the present request for information. You also state, and we agree, the submitted information pertains to the substance of these pending lawsuits. Based on your representations and our review, find the submitted information is related to the pending litigation. Accordingly, the authority may withhold the submitted information under section 552.103(a) 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. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. 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.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/bw

Ref: ID# 612982

Enc. Submitted documents

Requestor
(w/o enclosures)