



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 10, 2017

Mr. Jaime J. Salazar
Operations Manager
Hidalgo County Drainage District No. 1
902 North Doolittle Road
Edinburg, Texas 78542

OR2017-25813

Dear Mr. Salazar:

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# 683611 (File No. 2017-003).

The Hidalgo County Drainage District Number One (the "district") received a request for e-mails between specified individuals for a period of time.¹ You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. You also state you notified an interested third party of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released.² See Gov't Code § 552.304 (interested party may submit comments stating why

¹We note the requestor modified her request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing 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).

²As of the date of this letter, we have not received any comments from the interested third party explaining why any portion of the submitted information should not be released to the requestor.

information should or should not be released). We have considered the exception you claim and reviewed the submitted representative sample of information.³

Section 552.103 of the Government Code provides in relevant part as follows:

(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, 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The district states, and provides documentation showing, a lawsuit styled *Hidalgo County Drainage District No. 1 v. Integ Corporation, et al.*, Cause No. C-0373-17-E was pending in the 275th Judicial District of Hidalgo County when it received the instant request for information. You state the information at issue is related to the pending lawsuit. Based on your representations, the submitted documentation, and our review of the information at issue, we find litigation was pending when the district received this request for information, and the information at issue is related to the pending litigation for the purposes of section 552.103. Therefore, the district may withhold the submitted information under section 552.103(a) of the Government Code.

³We assume 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.

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 parties 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 been 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,



D. Michelle Case
Attorney
Open Records Division

DMC/som

Ref: ID# 683611

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)