



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 4, 2017

Mr. Mitchell G. Page
Counsel for the San Jacinto River Authority
Schwartz, Page & Harding, L.L.P.
1300 Post Oak Boulevard, Suite 1400
Houston, Texas 77056

OR2017-27409

Dear Mr. Page:

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# 687755.

The San Jacinto River Authority (the "authority"), which you represent, received two requests from different requestors for specified documents, including an engineering plan, operational protocols, and flood control plans, referenced in a separate press release and question and answer document; and documents that show the authority may perform specified actions. The authority claims the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions the authority claims and reviewed the submitted information. We have also received and considered comments from the second requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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). 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 from disclosure under section 552.103(a).

The authority states, and provides documentation showing, a lawsuit styled *Thomas E. and Beth F. Ross v. San Jacinto River Authority* was pending against the authority in the 152nd District Court of Harris County, Texas, when the authority received the first request for information. Therefore, we agree litigation was pending when the authority received the first request. We also find the authority has established the submitted information is related to the pending litigation for purposes of section 552.103(a). Therefore, the authority may withhold the submitted information under section 552.103(a) of the Government Code.¹

However, once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

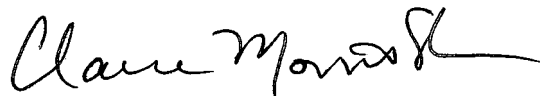
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

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 "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 687755

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)