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ATTORNEY GENERAL OF TEXAS

January 9, 2020

Mr. E. Barry Gaines
Senior Legal Counsel
Harris County Appraisal District
P.O. Box 920975
Houston, Texas 77292-0975

Mr. Eric C. Farrar
Counsel for the Harris County Appraisal District
Olson & Olson LLP
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2020-00847

Dear Mr. Gaines and Mr. Farrar:

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# 805747 (PIR Nos. HCAD19-5139, HCAD19-5140, and HCAD19-5141).

The Harris County Appraisal District (the "district") received three requests from the same requestor for information pertaining to specified property of the requestor's clients.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides 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

¹ We note the district sought and received clarification of the information requested. See Gov't Code § 552.222 (providing 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 when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

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, three lawsuits were pending against the district: 1) *Battleground Oil Specialty Terminals Co. v. Harris County Appraisal Dist.*, Cause No. 2019-71350, in the 113th Judicial District Court of Harris County, Texas; 2) *GATX Terminals Corp. v. Harris County Appraisal Dist.*, Cause No. 2019-71480, in the 189th Judicial District Court of Harris County; and 3) *Kinder Morgan Galena Park W. v. Harris County Appraisal Dist.*, in the 269th Judicial District Court of Harris County when it received the instant request for information. You state the submitted information is related to the pending lawsuits. Based on your representations, the submitted documentation, and our review of the submitted information, we find litigation was pending when the district received this request for information, and the submitted information 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.²

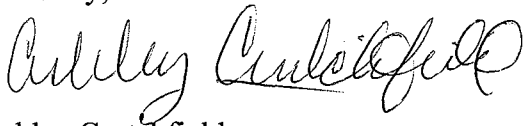
Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided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

² As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/rm

Ref: ID# 805747

Enc. Submitted documents

c: Requestor
(w/o enclosures)