



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2008

Mr. Christopher S. Jackson
Perdue, Brandon, Fielder, Collins & Mott, L.L.P.
3301 Northland Drive, Suite 505
Austin, Texas 78731

OR2008-11868

Dear Mr. Jackson:

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# 320285.

The Grayson Central Appraisal District (the "district"), which you represent, received two requests for several categories of information related to the district's appraisal of private boat docks on Lake Texoma in 2007 and 2008.¹ You state that you will release some of the requested information to the requestors, however, you claim that the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. You also state that releasing the submitted information may implicate the interests of the U.S. Army Corps of Engineers (the "Corps"). Accordingly, you have notified the Corps of the request and of its opportunity to submit comments to this office. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 allows a governmental body to rely on an interested third party to raise and explain the applicability of the exception to disclosure in certain circumstances). We have received arguments on behalf of the Corps. We have considered the exceptions you claim

¹You inform us that the district received a clarification of this request from one of the requestors. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

and reviewed the submitted representative sample of information.² We have also considered comments submitted by an interested party. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that some of the responsive information may be the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2008-10462 (2008), 2007-10688 (2007), 2007-11431 (2007), 2007-13903 (2007), and 2007-13145 (2007). To the extent the law, facts, and circumstances on which the prior rulings were based have not changed, the district must continue to rely on those rulings as previous determinations and withhold the requested information in accordance with Open Records Letter Nos. 2008-10462, 2007-10688, 2007-11431, 2007-13903, and 2007-13145. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted responsive information is not identical, we will consider the submitted arguments.

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 that the section 552.103 exception is applicable in a particular

²We assume that 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.

situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date that 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, no pet.); *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.

You state, and provide documentation showing, that three lawsuits were filed against the district prior to the district's receipt of these requests. *Dale v. Grayson Central Appraisal District* is currently pending in the United States District Court for the Eastern District of Texas, Sherman Division. *White v. Grayson Central Appraisal District* and *Phillips v. Grayson Central Appraisal District* were both filed in the 336th Judicial District in Grayson County. We note that the district is named as a party in all of the petitions. Based upon your representations and our review, we conclude that litigation was pending when the district received the present requests. You also state that the submitted information originally came from the Corps and is the same information at issue in the pending lawsuits. Thus, we also conclude that the submitted information is related to the pending lawsuits for the purposes of section 552.103. Therefore, the district may withhold the submitted information under section 552.103 of the Government Code.³

However, once the information at issue has been obtained by all parties to the pending lawsuits through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any submitted information that has either been obtained from or provided to all other parties in the pending lawsuits 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 concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

The requestors claim, however, that they have a right of access to the responsive information pursuant to section 25.195 of the Tax Code. Section 25.195 provides in relevant part:

(a) After the chief appraiser has submitted the appraisal records to the appraisal review board as provided by Section 25.22(a), a property owner or the owner's designated agent is entitled to inspect and copy the appraisal records relating to property of the property owner, together with supporting data, schedules, and, except as provided by Subsection (b), any other material or information held by the chief appraiser or required by Section 25.01(c) to be provided to the appraisal district under a contract for appraisal services,

³As our ruling is dispositive, we need not address the additional arguments against disclosure.

including material or information obtained under Section 22.27, that is obtained or used in making appraisals for the appraisal records relating to that property.

(b) The owner of property other than vacant land or real property used for residential purposes or the owner's agent may not inspect any material or information obtained under Section 22.27.

Tax Code § 25.195(a)-(b). Prior decisions of this office have held that section 25.195 gives property owners a right of access to all information used to appraise the owners' properties, including information pertaining to properties of other owners. *See* Open Records Decision Nos. 550 (1990) (property owner has right of access to all appraisal records relating to owner's property), 500 (1988). In Attorney General Opinion JC-0424, however, this office examined the relationship between sections 25.195 and 22.27 of the Tax Code. *See* Attorney General Opinion JC-0424 (2001). In that opinion, we noted the 1997 legislative amendments to section 25.195 "include[d] the express reference to section 22.27 in subsection (a) of section 25.195 and [added] subsection (b)." *Id.* at 3; *see* Act of June 1, 1997, 75th Leg., R.S., ch. 1039, § 25, 1997 Tex. Gen. Laws 3897, 3910. We found that the "effect of [those] amendments appears to have been to limit the right of access to information filed by others and made confidential under section 22.27 to owners of vacant land and residential real property, thus precluding owners of [other types of property] from obtaining such information." Attorney General Opinion JC-0424 at 3 (2001).

The requestors claim that they are the property owners of boat docks on Lake Texhoma and have a right of access to appraisal records used to appraise these boat docks pursuant to section 25.195. The district has represented to our office that the Corps is the property owner of the boat docks at issue. The ownership of the boat docks is a question of fact. This office cannot resolve questions of fact in the open records process, but instead must rely on the representations of the governmental body requesting our opinion. *See* generally Open Records Decision Nos. 554 (1990), 552 (1990). Based on the district's representation that the Corps is the property owner of the boat docks, we conclude that the requestors do not have a right of access to the appraisal records of these boat docks under section 25.195. Thus, the district may withhold the information at issue under section 552.103 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

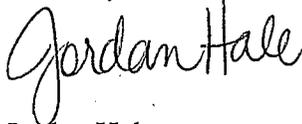
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 320285

Enc. Submitted documents

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