



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 8, 2012

Ms. Sandra Griffin  
For Menard County Appraisal District  
Perdue, Brandon, Fielder, Collins & Mott, L.L.P.  
3301 Northland Drive, Suite 505  
Austin, Texas 78731

OR2012-06753

Dear Ms. Griffin:

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# 451508.

The Menard County Appraisal District (the "district"), which you represent, received a request for (1) specified communications pertaining to the district's "ASR and MAP reviews" and "the district's three depreciation percentage modifiers" and (2) four categories of information "for Tax Years 2009, 2010, and 2011." You inform us that the district will release the information for Tax Years 2009 through 2011 that is responsive to categories two and three of the second part 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 representative samples of information.<sup>1</sup> We have also considered comments submitted by an attorney representing the 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 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

---

<sup>1</sup>We 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 those records contain substantially different types of information than that submitted to this office.

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.

*Id.* § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (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. *See 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(a).

To establish litigation is reasonably anticipated, a governmental body must provide this office with “concrete evidence showing the claim that litigation may ensue is more than mere conjecture.” Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See id.* Concrete evidence to support a claim litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.<sup>2</sup> *See* Open Records Decision No. 555 (1990); *see also* Open Records Decision No. 518 at 5 (1989) (litigation must be “realistically contemplated”). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Further, the fact a potential opposing party has hired an attorney who makes a request for information does not establish litigation is reasonably anticipated. *See* Open Records Decision No. 361 (1983). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* ORD 452 at 4.

---

<sup>2</sup>In addition, this office has concluded litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

You inform us that the district was a party to a lawsuit styled *M. McAllister Family Partnership, LTD., v. Menard County Appraisal District and the Menard County Appraisal Review Board*, Cause No. 2007-05111, in the 198th Judicial District Court of Menard County, Texas. You state this litigation resulted in a final judgment. You assert, however, that the district reasonably anticipates litigation concerning enforcement of this judgment. You state, and provide records showing, that the requestor and his attorney have threatened to sue the district to enforce the judgment. Based on your representations and our review of the submitted documentation, we conclude you have established litigation was reasonably anticipated when the district received the request for information. Further, we agree the submitted information relates to the anticipated litigation. Therefore, the district may generally withhold this information under section 552.103 of the Government Code.<sup>3</sup>

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. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending or anticipated litigation 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 been concluded or is no longer anticipated. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

We note the requestor's attorney asserts a statutory right of access to some of the submitted information under section 23.011 of the Tax Code, which provides, in pertinent part, the following:

If the chief appraiser uses the cost method of appraisal to determine the market value of real property, the chief appraiser shall:

...

(3) make available to the public on request cost data developed and used by the chief appraiser as applied to all properties within a property category and may charge a reasonable fee to the public for the data; [and]

...

---

<sup>3</sup>As our ruling is dispositive, we need not address the e-mail addresses you have marked in Exhibit I. We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. However, section 552.137 does not apply to, and Open Records Decision No. 684 does not authorize the withholding of, an e-mail address that a governmental entity maintains for one of its officials or employees.

(5) make available to the property owner on request all applicable market data that demonstrate the difference between the replacement cost of the improvements to the property and the depreciated value of the improvements.

Tax Code § 23.011(3), (5). Section 23.011 describes the cost method of appraising the market value of real property. *See id.* § 23.011. Pursuant to section 23.011(3), the public has a right of access to cost data developed and used by the district's chief appraiser as applied to all properties within a property category. *See id.* § 23.011(3). Pursuant to section 23.011(5), a property owner has a right of access to all applicable market data that demonstrate the difference between the replacement cost of the improvements to his property and the depreciated value of the improvements. *See id.* § 23.011(5).

You inform us that the chief appraiser uses the cost method of appraisal in determining the market value of many classes of property. In response to our office's request for additional information under section 552.303(c) of the Government Code, you inform us that Exhibit J consists of cost data developed and used by the chief appraiser as applied to all properties within the residential property category. *See Gov't Code* § 552.303(c) (attorney general may give written notice to governmental body that additional information is necessary to render decision). You also inform us that portions of Exhibit K consist of market data demonstrating the difference between the replacement cost and depreciated value of certain improvements to the requestor's residential property. Thus, the requestor has a statutory right of access to Exhibit J and portions of Exhibit K. Although you seek to withhold the information at issue under section 552.103 of the Government Code, a specific statutory right of access provision prevails over general exceptions to disclosure under the Act. *See Open Records Decision No. 451 at 4 (1986)* (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). Thus, the district must release the cost data developed and used by the chief appraiser as applied to all properties within the residential property category in Exhibit J to the requestor pursuant to section 23.011(3) of the Tax Code. Furthermore, the district must release the portion of Exhibit K that consists of market data demonstrating the difference between the replacement cost and depreciated value of certain improvements to the requestor's residential property pursuant to section 23.011(5) of the Tax Code. The district may withhold the remaining information under section 552.103 of the Government Code.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'KLC', with a long horizontal flourish extending to the right.

Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/dls

Ref: ID# 451508

Enc. Submitted documents

c: Requestor  
(w/o enclosures)