



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2014

Mr. Michael B. Gary
Chief Legal Officer
Harris County Appraisal District
P.O. Box 920975
Houston, Texas 77292-0975

OR2014-01659

Dear Mr. Gary:

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# 512430 (HCAD Internal Reference 13-13-4114).

The Harris County Appraisal District (the "district") received a request for the following categories of information: (1) specified budget documents; (2) specified audit reports; (3) contracts and letters of engagement between the district and a named law firm; information pertaining to payment, bills, or compensation given to the specified law firm; (4) specified agendas, minutes, and secretary notes of meetings of the district's Board of Directors; and (5) specified e-mails and letters regarding twenty-six specified appraisal accounts. You claim the requested 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 sample of information.¹

Initially, we note the submitted information includes an agenda and draft minutes of meetings of the district's board of directors. The agendas and minutes of a governmental body's public meetings are specifically made public under provisions of the Open Meetings Act,

¹We 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.

chapter 551 of the Government Code. *See id.* §§ 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying on request to governmental body's chief administrative officer or officer's designee), .041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). In this instance, the submitted minutes are draft minutes. We note the minutes of a public meeting of a governmental body are public records when entered, are public in whatever form they exist, and public access may not be delayed until formal approval is obtained. Open Records Decision No. 225 (1979). Accordingly, sections 552.022 and 552.041 are applicable to the agenda and draft minutes we have marked. Although you raise section 552.103 of the Government Code as an exception to disclosure of this information, we note that as a general rule, the exceptions to disclosure found in the Act are not applicable to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the agenda and draft minutes we have marked may not be withheld under section 552.103 of the Government Code. As you raise no other exceptions to disclosure, the marked agenda and draft minutes must be released.

Next, we note the remaining information contains resolutions adopted by the district's board of directors. Because laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure under the Act. *See* Open Records Decision No. 551 at 2-3 (1990) (laws or ordinances are open records). The submitted resolutions are analogous to an ordinance. Therefore, the district must release the resolutions we have marked.

We note some of the remaining information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Gov't Code § 552.022(a)(3), (5). The remaining information includes checks and invoices that are subject to section 552.022(a)(3) of the Government Code. The submitted budget information constitutes information used to estimate the need for or expenditure of district funds and is subject to section 552.022(a)(5) of the Government Code. The district must release the information subject to subsections 552.022(a)(3) and 552.022(a)(5) unless the information is made confidential under the Act or other law. *Id.* You raise section 552.103 as an exception to disclosure of the submitted information. However, section 552.103 is a discretionary exception that does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). Accordingly, the information subject to section 552.022, which we have marked, may not be withheld under section 552.103 of the Government Code. However, section 552.136 of the Government Code is applicable to portions of the checks subject to section 552.022(a)(3).² Accordingly, we will address the applicability of section 552.136 to the information subject to section 552.022(a)(3). We will also address your argument under section 552.103 of the Government Code for the information that is not subject to section 552.022.

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 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(a) exception is applicable in a particular situation. The test for meeting this burden is showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex.*

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103.

You inform us, and have provided documentation showing, that lawsuits, styled *Valero Refining-Texas L.P. and Valero Refining Company Texas v. Harris County Appraisal District*, Cause No. 2013-49459, and *Valero Refining-Texas L.P. and Valero Refining Company Texas v. Harris County Appraisal District*, Cause No. 2012-56551, were pending in the 333rd and 269th Judicial District Courts for Harris County, respectively, prior to the receipt of the instant request for information. You state the submitted information is related to the pending lawsuits. Based on your representations and our review, we agree that litigation to which the district is a party was pending on the date the district received the request. We further find that the remaining information relates to the pending litigation. Therefore, with the exception of the marked agenda and draft minutes, the marked resolutions, and the information subject to section 552.022 of the Government Code, the district may withhold the submitted information under section 552.103 of the Government Code.

We note once information has been obtained by all parties to the pending 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 the opposing party 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).

Section 552.136 of the Government Code states “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. Accordingly, we find the district must withhold the bank account and routing numbers we marked under section 552.136 of the Government Code.

In summary, with the exception of the marked agenda and draft minutes, the marked resolutions, and the information subject to section 552.022 of the Government Code, the district may withhold the submitted information under section 552.103 of the Government Code. The district must withhold the information we have marked under section 552.136 of the Government Code. The remaining information must be released.

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,

A handwritten signature in black ink, appearing to read "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J".

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 512430

Enc. Submitted documents

c: Requestor
(w/o enclosures)