



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 9, 2014

Mr. Braden W. Metcalf
Counsel for the Dallas Central Appraisal District
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard Street
Dallas, Texas 75201

OR2014-22259

Dear Mr. Metcalf:

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# 545023 (Reference No. 68352).

The Dallas Central Appraisal District (the "district"), which you represent, received a request for information pertaining to three specified account numbers and a specified hearing. 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 information.

We note the submitted information includes audio recordings of Appraisal Review Board hearings (the "hearings"). Section 41.66(d) of the Tax Code states "[e]xcept as provided by Subsection (d-1), hearings conducted as provided by this chapter are open to the public." Tax Code § 41.66(d). Section 41.66(d-1) states in pertinent part,

Notwithstanding Chapter 551, Government Code, the appraisal review board shall conduct a hearing that is closed to the public if the property owner or the chief appraiser intends to disclose proprietary or confidential information at the hearing that will assist the review board in determining the protest. The review board may hold a closed hearing under this subsection only on a joint motion by the property owner and the chief appraiser.

Id. § 41.66 (d-1). We also note section 551.022 of the Open Meetings Act, chapter 551 of the Government Code, expressly provides that the “minutes and tape recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body’s chief administrative officer or the officer’s designee.” Gov’t Code § 551.022. We are unable to determine whether the hearings at issue were conducted as open hearings pursuant to subsection 41.66(d).¹ Accordingly, we must rule conditionally. If the hearings at issue were conducted as open hearings pursuant to subsection 41.66(d), then the audio recordings at issue are recordings of open meetings of the district’s Appraisal Review Board and are subject to section 551.022. You seek to withhold the submitted audio recordings under section 552.103 of the Government Code. As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, if the hearings at issue were conducted as open hearings pursuant to subsection 41.66(d), then the district must release the submitted audio recordings pursuant to section 551.022 of the Government Code. To the extent the hearings were not conducted as open hearings pursuant to subsection 41.66(d), we will address your argument against disclosure of the submitted audio recordings, as well as the remaining information, under section 552.103 of the Government Code.

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 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.

¹Pursuant to section 552.303 of the Government Code, this office asked the district to provide additional information regarding whether the hearings were closed to the public pursuant to section 41.66(d-1) of the Tax Code. Gov’t Code § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). However, as of the date of this letter, the district has not responded to our request for additional 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 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. *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).

You state, and submit documentation demonstrating, prior to the district's receipt of this request, a lawsuit styled *Dallas Central Appraisal District v. Bellamy*, Cause No. DC 14-10300-M, was filed and is currently pending in the 298th Judicial District Court in Dallas County, Texas. You further state the submitted information is related to the pending litigation because it pertains to the claims in the lawsuit. Upon review of your arguments and the information at issue, we find the information at issue relates to litigation that was pending when the district received this request for information. Accordingly, we find the information at issue is generally subject to section 552.103 of the Government Code.

However, 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). Accordingly, to the extent the submitted information was not obtained from or provided to the opposing party, the district may withhold the submitted information under section 552.103 of the Government Code. However, the district may only withhold the submitted audio recordings under section 552.103 to the extent the audio recordings are not subject to section 551.022. To the extent any of the submitted information was obtained from or provided to the opposing party, it may not withheld it under section 552.103 of the Government Code.

In summary, if the hearings were conducted as open hearings pursuant to subsection 41.66(d), the district must release the submitted audio recordings pursuant to section 551.022 of the Government Code. To the extent the submitted information was not obtained from or provided to the opposing party, the district may withhold the submitted information under section 552.103 of the Government Code. To the extent the submitted information was obtained from or provided to the opposing party, it 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" and a stylized "L".

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 545023

Enc. Submitted documents

c: Requestor
(w/o enclosures)