



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 11, 2015

Ms. Connie C. Lock
Counsel for the Wilson County Appraisal District
Denton Navarro Rocha Bernal Hyde & Zech, P.C.
2517 North Main Avenue
San Antonio, Texas 78212-4685

OR2015-09132

Dear Ms. Lock:

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# 562911.

The Wilson County Appraisal District (the "district"), which you represent, received a request for all records pertaining to a specified address during a specified time period, including correspondence with the tax payers, the mortgage company, and the district's legal counsel. 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 information.

Initially, we note the submitted information includes a court-filed document. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). Although you seek to withhold this information under section 552.103 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and 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); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, the district may not withhold the court-filed document, which we have marked,

under section 552.103. As you raise no further exceptions to disclosure, the district must release the marked court-filed document.

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.

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).

You contend the remaining information is related to pending litigation to which the district is a party. You inform us, and have provided documentation demonstrating, litigation styled *Vick v. Floresville Independent School District*, Cause No.14-05-0504-CVW, was pending in the District Court of Wilson County, 218th Judicial District on the date the district received the request. You further explain the remaining information is related to the pending lawsuit because it pertains to the assessment and collection of taxes, the circumstances of which are the issue of the pending litigation. 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 we find the remaining information is related to the pending litigation for purposes of section 552.103. Therefore, the district may withhold the remaining information under section 552.103 of the Government Code.

We note, however, the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. *See* ORD 551 at 4-5. Thus, if the opposing party has seen or had access to information relating to the pending litigation through discovery or otherwise, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We also note the applicability of section 552.103 ends once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the district must release the court-filed document we have marked under section 552.022(a)(17) of the Government 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.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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 562911

Enc. Submitted documents

c: Requestor
(w/o enclosures)