



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 26, 2015

Ms. Sarah Knippa  
Records Coordinator  
Travis Central Appraisal District  
P.O. Box 149012  
Austin, Texas 78714-9012

OR2015-12803

Dear Ms. Knippa:

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# 568717 (PIR No. 10688).

The Travis Central Appraisal District (the "district") received a request for information regarding eight specified accounts for the 2010-2014 tax years. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.149 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which consists of a representative sample.<sup>1</sup>

Initially, we note portions of the submitted information are subject to section 552.022 of the Government Code. Section 552.022(a) provides, in pertinent part:

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

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<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 that those records contain substantially different types of information than that submitted to this office.

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(1), (17). Portions of the submitted information, which we have marked, consist of completed appraisals subject to section 552.022(a)(1) of the Government Code and court-filed documents subject to section 552.022(a)(17) of the Government Code. The district must release the completed appraisals pursuant to section 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the Government Code or are made confidential under the Act or other law. *See id.* § 552.022(a)(1). The district must release the court-filed documents pursuant to section 552.022(a)(17) unless they are made confidential under the Act or other law. *See id.* § 552.022(a)(17). Although you raise section 552.103 of the Government Code for this information, this exception is discretionary in nature 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); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the district may not withhold any of the information subject to section 552.022, which we have marked, under section 552.103. As you raise no further exceptions to disclosure of this information, the district must release the information we have marked pursuant to section 552.022. However, we will address your arguments against disclosure of the remaining information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 22.27 of the Tax Code, which states, in pertinent part:

(a) Rendition statements, real and personal property reports, attachments to those statements and reports, and other information the owner of property provides to the appraisal office in connection with the appraisal of the property, including income and expense information related to a property filed with an appraisal office and information voluntarily disclosed to an appraisal office or the comptroller about real or personal property sales prices after a promise it will be held confidential, are confidential and not open to public inspection. The statements and reports and the information they contain about specific real or personal property or a specific real or personal property owner and information voluntarily disclosed to an appraisal office about real or personal property sales prices after a promise it will be held

confidential may not be disclosed to anyone other than an employee of the appraisal office who appraises property except as authorized by Subsection (b) of this section.

Tax Code § 22.27(a). You argue some of the submitted information is confidential under section 22.27(a). You indicate the district is an appraisal office for purposes of section 22.27. You do not indicate any of the exceptions in section 22.27(b) apply in this instance. *See id.* § 22.27(b). You state the appraisal information at issue was submitted under a promise of confidentiality. However, you do not inform us whether the information you seek to withhold was provided by property owners. Thus, we must rule conditionally. To the extent the information you seek to withhold was provided by property owners in connection with an appraisal under a promise of confidentiality, the district must withhold such information under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. Additionally, to the extent any of the remaining information at issue was provided by property owners in connection with an appraisal, the district must withhold such information under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. However, to the extent the information at issue was not provided by property owners in connection with an appraisal, the information is not confidential under section 22.27(a) of the Tax Code and may not be withheld under section 552.101 of the Government Code on that basis.

You also claim some of the information you seek to withhold is excepted from disclosure under section 552.149 of the Government Code, which provides, in relevant part:

(a) Information relating to real property sales prices, descriptions, characteristics, and other related information received from a private entity by the comptroller or the chief appraiser of an appraisal district under Chapter 6, Tax Code, is excepted from the requirements of [the Act].

(b) Notwithstanding Subsection (a), the property owner or the owner's agent may, on request, obtain from the chief appraiser of the applicable appraisal district a copy of each item of information described by Section 41.461 (a)(2), Tax Code, and a copy of each item of information that the chief appraiser took into consideration but does not plan to introduce at the hearing on the protest. In addition, the property owner or agent may, on request, obtain from the chief appraiser comparable sales data from a reasonable number of sales that is relevant to any matter to be determined by the appraisal review board at the hearing on the property owner's protest[.]

Gov't Code § 552.149(a)-(b). Subsections 552.149(a) and (b) are limited to those counties having a population of 50,000 or more. *Id.* § 552.149(e). We note Travis County has a population of 50,000 or more. You indicate the information at issue includes information obtained from private entities. Therefore, to the extent the information you seek to withhold

relates to real property sales prices, descriptions, characteristics, and other related information that was provided to the district by private entities, the district must withhold the information under section 552.149(a) of the Government Code. Conversely, to the extent the information at issue does not relate to real property sales prices, descriptions, characteristics, and other related information or was not provided to the district by private entities, it is not confidential under section 552.149(a) and it may not be withheld on that basis.

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 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 the submitted documents demonstrate, prior to the receipt of the instant request for information, lawsuits were filed against the district regarding the appraisal value of the specified properties. You further state the information you have indicated is related to the pending litigation because it pertains to the claims in the lawsuits. 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 you have indicated is generally subject to section 552.103 of the Government Code.

However, we note the opposing party in the pending litigation may have seen or had access to some of the information at issue, which we have marked. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* ORD 551 at 4-5. Thus, if the opposing party has seen or had access to information relating to litigation, through discovery or otherwise, then there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Therefore, except for the information subject to section 552.022 and any information the opposing party has seen or had access to, the district may withhold the information you have indicated under section 552.103 of the Government Code. 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).

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).<sup>2</sup> *See* Gov’t Code § 552.137(a)-(c). Accordingly, the district must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the district must release the information we have marked pursuant to section 552.022. To the extent any of the information you seek to withhold was provided by property owners in connection with an appraisal under a promise of confidentiality, the district must withhold such information under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. To the extent any of the remaining information you seek to withhold was provided by property owners in connection with an appraisal, the district must withhold such information under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. To the extent the information you seek to withhold relates to real property sales prices, descriptions, characteristics, and other related information that was provided to the district by private entities, the district must withhold the information under section 552.149(a) of the Government Code. Except for the information subject to section 552.022 and any information the opposing party has seen or had access to, the district may withhold the information you have indicated under section 552.103 of the Government Code. The district must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The district must release any remaining information.

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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](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,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/bhf

Ref: ID# 568717

Enc. Submitted documents

c: Requestor  
(w/o enclosures)