



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 9, 2015

Mr. James R. Evans, Jr.
Counsel for Walker County Appraisal District
Hargrove & Evans, L.L.P.
Building 3, Suite 400
4425 Mopac South
Austin, Texas 78735

OR2015-21224

Dear Mr. Evans:

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# 582465.

The Walker County Appraisal District (the "district"), which you represent, received a request for eight categories of information pertaining to the requestor's property, including the criteria or basis used for a certain determination and to calculate the appraised value of the requestor's property for a specified year. You state the district does not have information responsive to one of the requested categories.¹ You claim the submitted information is excepted from disclosure under sections 552.103 and 552.149 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²Although you also raise section 552.101 for the submitted information, you provide no arguments explaining how this exception is applicable to the information at issue. Therefore, we assume you no longer assert this exception. *See Gov't Code* §§ 552.301, .302.

³We 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.

Initially, we note some of the information at issue is subject to section 552.022 of the Government Code, which 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:

...

(12) final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases[.]

Gov't Code § 552.022(a)(12). The information at issue includes final orders subject to subsection 552.022(a)(12), which the district may only withhold if they are made confidential under the Act or other law. Although you raise section 552.103 of the Government Code for the information subject to section 552.022, section 552.103 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); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). As such, the district may not withhold the information subject to section 552.022, which we have marked, under section 552.103. As you raise no other exceptions to disclosure for the information subject to section 552.022, it must be released. However, we will consider your arguments for the remaining information at issue.

Section 552.103 of the Government Code provides in relevant 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). 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* Open Records Decision No. 551 at 4-5 (1990). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception applies 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 requested information 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, 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.); ORD 551 at 4. The governmental body must meet both parts of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

This office has long held that “litigation,” for purposes of section 552.103, includes “contested cases” conducted in a quasi-judicial forum. *See* Open Records Decision Nos. 474 (1987), 368 (1983), 336 (1982), 301 (1982). In determining whether an administrative proceeding is conducted in a quasi-judicial forum, some of the factors this office considers are whether the administrative proceeding provides for discovery, evidence to be heard, factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. *See* Open Records Decision No. 588 (1991).

You inform us that, prior to the district’s receipt of the instant request, the requestor filed a request for arbitration concerning the value of her property under section 41A.01 of the Tax Code. You state the arbitration proceeding is pending. We note an arbitration under section 41A.01 of the Tax Code is conducted in the same manner as a hearing filed under Chapter 171 of the Texas Civil Practices and Remedies Code. *See* Tax Code § 41A.08(a). We understand the parties exchange witness lists and exhibits, may present evidence and cross examine witnesses, and that the arbitrator will resolve factual issues. We note Chapter 171 of the Texas Civil Practices and Remedies Code allows for certain court proceedings following an arbitration. *See* Civ. Prac. & Rem. Code § 171.081. Upon application of a party that participated in the arbitration, a court may confirm, modify, correct, or vacate the arbitrator’s award. *See id.* §§ 171.087, .088, .091. Further, we note a party to the arbitration may appeal the judgment or order in the same manner as an order or judgment in a civil action. *Id.* § 171.098. Based on your representations and our review, we find the arbitration constitutes litigation of a judicial or quasi-judicial nature for purposes of section 552.103. *See generally* ORD 301 (discussing meaning of “litigation” under predecessor to section 552.103). Accordingly, we find the district was a party to pending litigation on the date it received the request for information. Further, you state the information at issue relates to the issue in the pending arbitration. Upon review of your arguments and the information at issue, we find the information at issue is related to litigation involving the district that was pending on the date the request was received.

Accordingly, we find the district may generally withhold the remaining information under section 552.103 of the Government Code.⁴

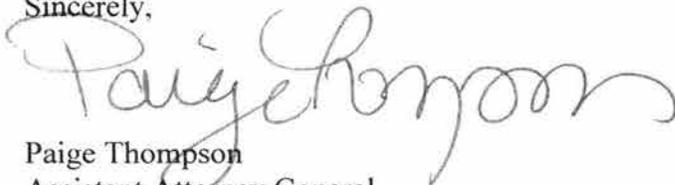
Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the anticipated litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. We note the opposing party has seen or had access to portions of the information at issue. Therefore, this information, which we have marked for release, is not protected by section 552.103 of the Government Code and may not be withheld on that basis. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the district must release the information we marked pursuant to section 552.022 of the government Code. With the exception of the information we marked for release, the district may withhold the remaining information under section 552.103 of the Government Code. The district must release the remaining information.

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

⁴As our ruling is dispositive, we need not address the remaining arguments against disclosure.

Ref: ID# 582465

Enc. Submitted documents

c: Requestor
(w/o enclosures)