



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 27, 2016

Mr. Jeff Law
Executive Director & Chief Appraiser
Tarrant Appraisal District
2500 Handley-Ederville Road
Fort Worth, Texas 76118-6909

OR2016-12181

Dear Mr. Law:

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# 613211. Because the ruling request involves litigation to which the Open Records Division is a party, preparation of this ruling has been assigned instead to the Opinion Committee.

The Tarrant Appraisal District (the "TAD") received on March 15, 2016, a request for information for nine "categories of information about all of the approximately 700,000 . . . real estate accounts in TAD's 2016 appraisal records." You tell us that you are producing the information requested for almost all of the categories. You claim the information in the categories for which you are not releasing the requested information is excepted from disclosure under section 552.103 of the Government Code. You also state that release of the submitted information may implicate the proprietary interests of Manatron, Inc., an affiliate of Thomson Reuters; Marshall & Swift (aka Marshall & Swift/Boeckh, L.L.C.); and Moore's Precision Cost Tables (aka J. Wayne Moore Ph.D., L.L.C.). Accordingly, you have notified these parties of the request and of their rights to submit arguments to this office as to why this information should not be released. *See* TEX. GOV'T CODE § 552.305(d) (permitting interested third party to submit to Attorney General reasons why requested information should not be released). We have received comments from Marshall & Swift. We have

considered the exception you claim, along with the submitted arguments, and reviewed the submitted representative sample of information.¹

Although you do not provide any arguments with respect to section 552.107(2), our review of your submission indicates that you are subject to an Agreed Temporary Injunction in the matter of *Marshall & Swift/Boeckh, L.L.C. v. Paxton*, No. D-1-GN-15-004134, whereby you are prohibited from releasing “the information at issue in Attorney General Letter Rulings OR2015-17474 and OR2015-17644 . . . pending the entry of a final judgment.” *Marshall & Swift/Boeckh, L.L.C. v. Paxton*, No. D-1-GN-15-004134 (201st Dist. Ct., Travis Cty., Tex. Oct. 23, 2015) (agreed temporary injunction). Section 552.107(2) provides that information is excepted from disclosure if “a court by order has prohibited disclosure of the information.” TEX. GOV’T CODE § 552.107(2). *See* Tex. Att’y Gen. ORD-143 (1976) at 1. Thus, pursuant to section 552.107(2), you must withhold information in this instant request that is “information at issue in Attorney General Letter Rulings OR2015-17474 and OR2015-17644.”

We consider whether information not excepted from disclosure under section 552.107(2) is excepted from disclosure under section 552.103 of the Government Code, which provides:

(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.

TEX. 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

¹We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Tex. Att’y Gen. ORD-499 (1988) at 6, Tex. Att’y Gen. ORD-497 (1988) at 4. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

information, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas 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.); Tex. Att'y Gen. ORD-551 (1990) at 4. A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You inform us and provide documentation showing that a lawsuit styled *Marshall & Swift/Boeckh, L.L.C. v. Paxton*, No. D-1-GN-15-004134, was filed in the 201st Judicial District Court of Travis County, Texas, on September 21, 2015, and was still pending when the TAD received the instant request for information. You also state that a lawsuit styled *Manatron & Moore v. Paxton*, No. D-1-GN-15-003973, was filed in the 200th Judicial District Court of Travis County, Texas, on September 14, 2015, and was also pending at the time of the instant request.

You state the information at issue in the instant request is related to the pending lawsuits because it includes the same or substantially similar information that is the subject of the two lawsuits. Based on your representations, the submitted documentation, and our review of the submitted information, we find litigation was pending when the TAD received this request for information. We also find that the submitted information is related to the pending litigation for the purposes of section 552.103. Therefore, the TAD may withhold the information at issue under section 552.103(a) of the Government Code.²

Generally, however, in the event the 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. Tex. Att'y Gen. ORD-349 (1982). We also note the applicability of section 552.103(a) ends once the litigation has concluded. Tex. Att'y Gen. Op. No. MW-575 (1982) at 1; Tex. Att'y Gen. ORD-350 (1982) at 3.

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

²Because section 552.103 is dispositive of this matter, we need not address the arguments submitted by the third parties pursuant to section 552.305.

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 cursive script that reads "Charlotte M Harper".

Charlotte M. Harper
Assistant Attorney General
Opinion Committee

CMH/sdk

Ref: ID# 613211

Enc. Submitted documents

c: Requestor
(w/o enclosures)