



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 30, 1994

Mr. Mike M. Tabor
Clark, West, Keller, Butler & Ellis, L.L.P.
4800 Renaissance Tower
Dallas, Texas 75270-2146

OR94-608

Dear Mr. Tabor:

On behalf of the Dallas Central Appraisal District ("DCAD"), you ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 26875.

The request at issue is for inspection of "original petitions filed against the DCAD for the year 1993." We understand that all the petitions were filed in the District Court of Dallas County and that the request is for inspection of the copies of the petitions that were served upon the DCAD. For the following reasons, we conclude that the DCAD must allow inspection of the requested petitions.

You claim first that the requested petitions are excepted from public disclosure by the "litigation exception," section 552.103 of the Government Code (former section 3(a)(3) of V.T.C.S. article 6252-17a). We disagree. The purpose of the litigation exception is to protect a governmental body's position in litigation by precluding the use of the act as a method to avoid the rules of discovery. Open Records Decision No. 551 (1990) at 4-5. The protection of section 552.103(a) is not available if the opposing party to the litigation has previously had access to the records at issue. In the absence of special circumstances, once information has been obtained by all parties to the litigation,

¹The Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. Id. § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. Id. § 47.

e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in the requested records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Because each of the requested petitions was created by the opposing party in a lawsuit filed against DCAD, the opposing party necessarily has had access to the record and DCAD has no justification for withholding the record under section 552.103(a).

You also contend that “[i]t would be unreasonably disruptive to require DCAD administrative personnel to discontinue ordinary and necessary work in order to give the time consuming personal service that would be required to separate the petitions from each individual file for contemporaneous review by [the requestor].” The act does not permit a consideration of the cost or method of providing access to information to determine whether that information should be disclosed. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 465 (1987) at 6.

You also state that the requested petitions are in over 300 files, which “are in active use.” Section 552.221(b) of the Government Code provides as follows:

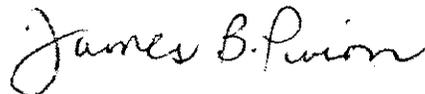
If the requested information is unavailable at the time of the request to examine because it is in active use or in storage, the officer for public records shall certify this fact in writing to the applicant and set a date and hour within a reasonable time when the record will be available for inspection or duplication.

Although information may be withheld if it is in immediate active use, section 552.221 “simply permits an agency to avoid unreasonable disruption of its immediate business, by scheduling a more convenient, but reasonable, time” to provide the information. Open Records Decision No. 121 (1976) at 3. Section 552.221 does not provide an exception from required public disclosure.

Finally, we understand you to suggest that all the requested petitions would be more easily accessible at the district clerk’s office. While this may be true, the act generally requires that the governmental body allow inspection or a copy of the actual record that has been requested. See Open Records Decision No. 606 (1992) at 2-3. Of course, courtesy and good sense require that the governmental body inform a requestor that the requested information may be more easily accessible elsewhere. Such a consideration is not a justification, however, for barring access if the requestor does not desire to change the request.

Because case law and prior published open records decisions resolve your request, we are concluding this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



James B. Pinson
Assistant Attorney General
Open Government Section

JBP/MAR/rho

Ref.: ID# 26875

Enclosures: Submitted documents

cc: Mr. Richard E. Finlan
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(w/o enclosures)