



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 15, 2007

Ms. Karen Evertson  
Perdue, Brandon, Fielder, Collins & Mott, L.L.P.  
3301 Northland Drive, Suite 505  
Austin, Texas 78731

OR2007-05979

Dear Ms. Evertson:

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# 278559.

The Tarrant Appraisal District (the "district"), which you represent, received a request for a specific appraisal report and a copy of the subpoena, as well as information related to the subpoena, used to obtain the appraisal report. You claim that a portion of the submitted information is not subject to the Act. In the alternative, you claim that this and the remaining submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.110 of the Government Code.<sup>1</sup> Additionally, you state that a portion of the submitted information may implicate the proprietary interests of third parties. Pursuant to section 552.305 of the Government Code, you have notified Metropolitan Life Insurance Co. ("MetLife") and City Center Development Co. ("City Center") of the request and of each company's right to submit arguments to this office as to why the information should not be released. *See Gov't Code § 552.305(d); see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). We have considered all the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (interested third party may submit comments stating why requested information should or should not be released).

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<sup>1</sup>Although you raise section 552.027 for information regarding litigation or settlement negotiations involving the state or political subdivision, we note that this section deals with commercially available publications. The proper exception to raise for your litigation argument is section 552.103 of the Government Code.

We begin by addressing the argument that the appraisal report is not subject to the Act because the report was created by a third-party, obtained during litigation by a subpoena, and made confidential by a protective order. The Act is applicable to “public information.” *See* Gov’t Code § 552.021. “Public information” is defined as “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business . . . by a governmental body or . . . for a governmental body and the governmental body owns the information or has a right of access to it.” *Id.* § 552.002(a). Information is generally subject to the Act when it is held by a governmental body and it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties. *See* Open Records Decision No. 635 (1995). Section 552.002 does not require that the information be created by the governmental body. In this instance, the district collected the report in the course of litigation between it and City Center regarding the appraisal values of property owned by City Center. We therefore determine that the appraisal report was collected or maintained in connection with the transaction of official business of the district, and thus, is public information as defined by section 552.002.

The district contends the appraisal report is the subject of a protective order. Section 552.107(2) of the Government Code excepts from required public disclosure information if “a court by order has prohibited disclosure of the information.” Gov’t Code § 552.107(2). The district provides us with a copy of the protective order, which prohibits the release of confidential documents to non-qualified persons and requires the return or destruction of these documents after the conclusion of the action. Both the district and City Center, the parties to the litigation, contend that the appraisal report is confidential. Based on their representations and our review, we conclude that the district must withhold the appraisal report pursuant to section 552.107(2) of the Government Code.<sup>2</sup>

The district asserts that section 552.103 of the Government Code applies to the remaining submitted information in Exhibit C. Section 552.103 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

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of the appraisal report.

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 that 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, no pet.); *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). 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. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, responsive information to which the parties in the pending litigation have had access is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

You state that although the litigation that relates to the requested subpoenas at issue has ended, the district and City Center are embroiled in another lawsuit regarding the same property but for a subsequent tax year. We find, however, that the district has not demonstrated that this other lawsuit was pending on the date of the request. Furthermore, the district has not explained how the remaining information in Exhibit C is related to this other lawsuit. *See* Gov't Code § 552.301(e)(1)(A) (governmental body that claims an exception to disclosure must reasonably explain how and why the claimed exception is applicable to the information at issue). We thus conclude that section 552.103 is not applicable to this information. As no other exception for the information in Exhibit C has been raised, it must be released.

In summary, the district must withhold the appraisal report pursuant to section 552.107(2) of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

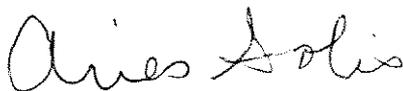
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Aries Solis  
Assistant Attorney General  
Open Records Division

AS/eeg

Ref: ID# 278559

Enc. Submitted documents

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