



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2009

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

OR2009-04553

Dear Ms Barton:

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# 339871.

The Lubbock Central Appraisal District (the "district"), which you represent, received a request for all records available for a stated property, a list of account numbers in Lubbock County relating to property classified as state industrial code "F2," information on sales of any vacant industrial land within the last four years, and information on sales of land within a stated geographic area within the last four years. You claim that sales price information responsive to the last two categories of the request is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us that the district asked the requestor to clarify his request for all records available for the stated property. We note that a governmental body may communicate with a requestor for the purpose of clarifying or narrowing a request for information. *See* Gov't Code § 552.222(b); Open Records Decision No. 663 at 2-5 (1999). We understand that the district has not received a response to its request for clarification. Accordingly, we find that the district has no obligation at this time to release any information that may be responsive to the part of the request for which it has not received clarification. However, if the requestor responds to the clarification request, the district must seek a ruling from this office before withholding any responsive information from the requestor. *See* Open Records Decision No. 663 (1999) (10-business-day deadline tolled while governmental body awaits clarification).

We also note that you have not submitted information responsive to the request for a list of account numbers relating to property classified as state industrial code "F2." Therefore, to the extent this information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000)

(if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in this particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date that the request for information is received, 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). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation is realistically contemplated and is more than mere conjecture. *Open Records Decision No. 518 at 5* (1989).

You inform us that the district is currently involved in litigation regarding the valuation of a property in Lubbock. You state that the litigation was pending at the time of the request. You also state, and the submitted documents indicate, that the requestor has been hired to appraise the property at issue in the litigation, and that he seeks the requested information in order to perform the appraisal. Based on your representations and our review of the submitted information, we agree that you have shown litigation was pending when the district received the request for information. In addition, we find that the information at issue is related to the pending litigation for purposes of section 552.103(a). Therefore, the district may withhold the submitted information under section 552.103 of the Government Code.¹

¹Since our ruling is dispositive, we need not address your remaining argument against disclosure.

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, information that has either been obtained from or provided to the opposing party in the pending litigation 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 been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Karen E. Stack
Assistant Attorney General
Open Records Division

KES/jb

Ref: ID# 339871

Enc. Submitted documents

c: Requestor
(w/o enclosures)