



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2009

Mr. Christopher S. Jackson
Perdue, Brandon, Fielder, Collins & Mott, L.L.P.
3301 Northland Drive, Suite 505
Austin, Texas 78731

OR2009-15113

Dear Mr. Jackson:

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# 359186.

The Tarrant Appraisal District (the "district"), which you represent, received two requests from the same requestor for the property exemption files and information pertaining to applications for personal and real property exemptions for several specified entities.¹ You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. You also state that the requests may involve third party proprietary interests and provide documentation showing that you have notified the interested third parties of the requests and of their opportunity to submit comments to this office as to why the submitted information should not be released to the requestor.² See

¹We note that the district received clarification regarding these requests. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²The third parties are as follows: Broadway Baptist Church; Altnesa Church of Christ; Crossroads Church of Fort Worth; Fort Worth Presbyterian Church; Harvest Assembly of God; Church of Jesus Christ of LDS (Azale & Keller); St. Andrew's Catholic Church; Unity Church; Christ Chapel Bible Church; Fellowship Church of Fort Worth; First United Methodist Church; First United Methodist Church of Bedford; Richland Hills Church of Christ; Southcliff Baptist Church; St. Andrew's Episcopal Church; the Met Church; Trinity Chapel Bible Church; Trinity Episcopal Church; and University Christian Church.

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 the applicability of exception to disclose under Act in certain circumstances). We have considered the submitted arguments and reviewed the representative sample of submitted information.³

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). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103 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.

You state, and provide documentation showing, that a lawsuit styled *Eagle Mountain International Church, Inc. d/b/a Kenneth Copeland Ministries v. Tarrant Appraisal District*, was filed in district court prior to the district's receipt of these requests. We note that the district is named as a party in the petition. Based upon your representations and our review, we conclude that litigation was pending when the district received the present requests.

³We assume that 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.

Furthermore, you explain how the information at issue relates to the pending litigation. Thus, we also conclude that the submitted information is related to the pending lawsuit for the purposes of section 552.103. Therefore, the district may withhold the submitted information under section 552.103 of the Government Code.⁴

However, once the information at issue has been obtained by all parties to the pending lawsuit through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any submitted information that has either been obtained from or provided to the opposing party in the pending lawsuit is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); *see also* 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, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

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

Ref: ID# 359186

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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