



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 4, 2010

Mr. Tim Kilpatrick
Deputy Chief Appraiser
Comal Appraisal District
P.O. Box 311222
New Braunfels, Texas 78131-1222

OR2010-01774

Dear Mr. Kilpatrick:

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# 369264.

The Comal Appraisal District (the "district") received a request for the following categories of information, to the extent they do not relate to Cause No. C2008-0098B, styled *American Opportunity for Housing - Comal Gardens LLC v. Comal County Appraisal District*: (1) the name, sex, ethnicity, salary, title, and dates of employment for all district employees who have worked on any Tax Code sections 11.182 or 11.1825 exemption applications for any applicant for tax years 2007, 2008, and 2009; (2) communications among and between those employees; (3) communications between those employees and any other Texas Central Appraisal District that pertain to Tax Code sections 11.182 or 11.1825 for tax years 2007, 2008, and 2009; (4) any policy statements or interpretations adopted by the district or issued by the district regarding affordable housing property tax exemptions available under Tax Code sections 11.182 or 11.1825; and (5) any settlement agreements involving the district the result of which was the granting or reinstatement of a tax exemption under Tax Code sections 11.182 or 11.1825 that had been denied or modified by the district

for tax years 2007, 2008, and 2009.¹ You state the district does not maintain past e-mail records.² You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.³ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the district has not submitted for our review any information responsive to the request for (1) the name, sex, ethnicity, salary, title, and dates of employment for all district employees who have worked on any Tax Code sections 11.182 or 11.1825 exemption applications for any applicant for tax years 2007, 2008, and 2009 or (2) settlement agreements involving the district the result of which was the granting or reinstatement of a tax exemption under Tax Code sections 11.182 or 11.1825 that had been denied or modified by the district for tax years 2007, 2008, and 2009. Thus, to the extent any additional responsive 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).

Next, we must address the requestor's assertion that the district did not meet its procedural obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In addition, pursuant to section 552.301(e) of the Government Code, a governmental body is required to

¹We note that the district received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* Open Records Decision No. 663 (1999) (discussing tolling of deadlines during period in which governmental body is awaiting clarification).

²The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

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.

submit to this office within fifteen business days of receiving an open records request: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). We note that this office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. In this instance, the district states it received the request for information on November 9, 2009. Accordingly, the tenth business day was November 24, 2009 and the fifteenth business day was December 3, 2009. The district's request for a decision from this office was postmarked on November 23, 2009. Further, the district submitted a representative sample of the information at issue and its comments on December 3, 2009. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Upon consideration of the requestor's comments and review of the submitted information, we conclude that the district fully complied with the requirements of section 552.301 of the Government Code in requesting this decision.

Section 552.103 of the Government Code provides 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(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 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).

You state, and provide documentation showing, that prior to the district's receipt of this request, a lawsuit styled *American Opportunity for Housing - Comal Gardens LLC v. Comal County Appraisal District*, Case No. C2008-0098B, was filed and is currently pending in the 207th Judicial District Court, Comal County, Texas. You further state the submitted information is related to the pending litigation because it pertains to the claims in the lawsuit. Accordingly, we find that litigation was pending when the district received this request for information and that the information at issue relates to the pending litigation. Therefore, section 552.103 is generally applicable to the submitted information.

We note once the information at issue has been obtained by all parties to the pending litigation 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). Accordingly, the district may only withhold the submitted information that the opposing parties to the litigation have not seen or had access to under section 552.103 of the Government Code. We note that 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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 369264

Enc. Submitted documents

c: Requestor
(w/o enclosures)