



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2010

Mr. Donald W. Hicks, Sr.
For the Dallas County Appraisal District
P.O. Box 764225
Dallas, Texas 75376-4225

OR2010-15533

Dear Mr. Hicks:

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# 396440.

The Dallas Central Appraisal District (the "district"), which you represent, received two requests from the same requestor for the MARS software used in residential appraisals, all comparable appraisals used to appraise the requestor's property in 2009 and 2010, and all other comparable residential appraisals that could have been utilized in the appraisal of the requestor's property for the same years. You assert the requested software is not subject to the Act. You claim that the remaining requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered your arguments and reviewed the submitted information.

You assert the requested software is not subject to the Act. The Act is applicable to "public information." See Gov't Code § 552.021. Section 552.002 of the Government Code provides that "public information" consists of

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002(a). In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information that is made public under section 552.021. *See* ORD 581 at 6 (construing predecessor statute). Based on the information you have submitted, we understand that the MARS software application is used to organize and search the information used by the district in appraising property values. Accordingly, we conclude that this information is not public information as defined by section 552.002 of the Government Code and thus is not subject to disclosure under the Act. Therefore, the district need not release the requested MARS software in response to this request for information.

Next, you state that the remaining requested information has been previously released to this requestor in response to discovery in pending civil litigation. We understand you to assert that the present request is duplicative and oppressive and that, as such, the district should not be required to release the requested information in response to the present request. Section 552.232 provides as follows:

(a) A governmental body that determines that a requestor has made a request for information for which the governmental body has previously furnished copies to the requestor or made copies available to the requestor on payment of applicable charges under Subchapter F, shall respond to the request, in relation to the information for which copies have been already furnished or made available, in accordance with this section, except that:

- (1) this section does not prohibit the governmental body from furnishing the information or making the information available to the requestor again in accordance with the request; and

- (2) the governmental body is not required to comply with this section in relation to information that the governmental body simply furnishes or makes available to the requestor again in accordance with the request.

(b) The governmental body shall certify to the requestor that copies of all or part of the requested information, as applicable, were previously furnished to the requestor or made available to the requestor on payment of applicable charges under Subchapter F. The certification must include:

- (1) a description of the information for which copies have been previously furnished or made available to the requestor;
 - (2) the date that the governmental body received the requestor's original request for that information;
 - (3) the date that the governmental body previously furnished copies of or made available copies of the information to the requestor;
 - (4) a certification that no subsequent additions, deletions, or corrections have been made to that information; and
 - (5) the name, title, and signature of the officer for public information or the officer's agent making the certification.
- (c) A charge may not be imposed for making and furnishing a certification required under Subsection (b).

(d) This section does not apply to information for which the governmental body has not previously furnished copies to the requestor or made copies available to the requestor on payment of applicable charges under Subchapter F. A request by the requestor for information for which copies have not previously been furnished or made available to the requestor, including information for which copies were not furnished or made available because the information was redacted from other information that was furnished or made available or because the information did not yet exist at the time of an earlier request, shall be treated in the same manner as any other request for information under this chapter.

Gov't Code § 552.232. Thus, section 552.232 allows a governmental body to certify that records have previously been provided to a requestor, rather than make those same records available to the same requestor in response to subsequent requests. However, section 552.232 applies only where a requestor has made a previous request for information under the Act. In this instance, you inform us that the information was previously provided to the requestor in the course of civil discovery and not in response to a request made under the Act. *See id.* § 552.0055 (request for discovery not considered to be a request for information under the Act.) Thus, we conclude that section 552.232 does not apply to the information that was previously released in the course of civil discovery. Accordingly, we will address your claimed exception to disclosure for this information.

Next, we note some of the remaining information is subject to section 552.022 of the Government Code, which states in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Id. § 552.022(a)(1). The remaining information contains completed appraisal reports. Pursuant to section 552.022(a)(1) of the Government Code, a completed report or investigation is expressly public, unless it is excepted under section 552.108 of the Government Code or is expressly confidential under “other law.” Section 552.103 of the Government Code is a discretionary exception to public disclosure that protects a governmental body’s interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (discretionary exceptions generally). As such, section 552.103 is not “other law” that makes information confidential for the purposes of section 552.022. Consequently, the appraisal reports may not be withheld under section 552.103 of the Government Code. As you raise no further exceptions to the disclosure of the appraisal reports, the district must release this information.

Section 552.103 of the Government Code provides:

(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.

Id. § 552.103(a), (c). When a governmental body receives a request for information that relates to pending or anticipated litigation, it may raise section 552.103 as an exception to disclosure in order to protect its litigation interests. *See id.* § 552.103; Open Records Decision No. 551 at 4 (1990) (noting that predecessor to section 552.103 protects discovery process and avoids interference in matters properly resolved in court by excepting from disclosure information when access to such material is more appropriately sought through discovery). The governmental body claiming this exception bears the burden of providing relevant facts and documents to demonstrate the applicability of the exception. The test for meeting this burden is a showing that (1) litigation is 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.); ORD 551 at 4. 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 the present request for information, the requestor filed suit against the district challenging the appraised value of his property for taxable year 2009. Further, you state that since the requestor filed suit, he has completed the protest for the 2010 valuation on July 17, 2010 and had sixty days from that date to amend his lawsuit to include tax year 2010. We therefore agree that litigation to which the district is a party was pending on the date the district received the request. We further find that the remaining information relates to the pending litigation. Therefore, we find section 552.103 of the Government Code is applicable to the remaining information.

However, as discussed previously, you inform us that the remaining information has already been provided to the requestor through civil discovery in the pending litigation. We note that 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). Therefore, the remaining information may not be withheld under section 552.103 of the Government Code. As you raise no further exceptions to the disclosure of this information, it must be released.

In summary, the requested software is not subject to the Act, and the district need not release it in response to the present request for information. The district must release the remaining information.

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 396440

Enc. Submitted documents

c: Requestor
(w/o enclosures)