



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 6, 2011

Mr. Michael B. Gary  
Assistant General Counsel  
Harris County Appraisal District  
P.O. Box 920975  
Houston, Texas 77292-0975

OR2011-06282

Dear Mr. Gary:

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# 416728 (HCAD Reference No. 11-024).

The Harris County Appraisal District (the "district") received a request for any documents relating to problems with the Manatron scheduling system. You claim that the requested information is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. You also claim release of the submitted information may implicate the proprietary interests of Manatron, Inc. ("Manatron"). Thus, pursuant to section 552.305 of the Government Code, you notified Manatron of the request and of the company's right to submit arguments to this office as to why its information should not be released. 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 certain circumstances). We have considered your arguments and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

First, we address your assertion the submitted information is not subject to the Act. The Act is applicable only to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Act defines public information as 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). You state that the submitted information consists of information regarding the use of a specific computer program and correspondence between Manatron and the district regarding the program. You assert the submitted documents meet the definition of "documentation information" addressed in Open Records Decision No. 581. "Documentation" is defined as "an English language text describing various aspects of a program, such as how the program was written and how it may be used and maintained." *Id.* at 3. However, we note the submitted information consists of e-mails between and among district employees and Manatron personnel concerning problems with the program. Information is within the scope of the Act if it relates to the official business of a governmental body and is maintained by a public official or employee of the governmental body. *See* Gov't Code § 552.002(a). Thus, having considered your arguments and reviewed the information at issue, we find the submitted information is maintained by the district in connection with the transaction of official district business that has significance other than as a tool for the maintenance, manipulation, or protection of public property. Accordingly, the submitted information is subject to the Act and may be withheld only if it falls within the scope of an exception to disclosure. *See id.* §§ 552.301, .302.

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 purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). 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. *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *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 from disclosure under section 552.103(a).

You state, and have provided documentation showing, prior to the district's receipt of the present request, a lawsuit styled *CORE/BN I LLC v. Appraisal Review Board of Harris County Appraisal District and Harris County Appraisal District*, Cause No. 2010-62193, was filed and is currently pending in the 333rd Judicial District Court in Harris County, Texas. Therefore, we agree that litigation was pending on the date the district received the present request for information. Further, you state the submitted information is related to the lawsuit pending before the court because the plaintiff in the court case stated during his appraisal review board hearing that the district's scheduling was at issue and the scheduling programs were provided by Manatron. Thus, based on the district's representation and our review of the information at issue, we agree the submitted information relates to the pending litigation. Accordingly, we conclude the district may withhold the submitted information under section 552.103 of the Government Code.

We note, 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. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Some of the information at issue was obtained from or provided to the opposing party. Thus, such information 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](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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 416728

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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Manatron, Inc.  
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(w/o enclosures)