



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 31, 2012

Mr. Peter K. Rusek  
Counsel for the McLennan County Appraisal District  
Sheehy, Lovelace & Mayfield, P.C.  
510 North Valley Mills Drive, Suite 500  
Waco, Texas 76710

OR2012-11925

Dear Mr. Rusek:

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# 460656.

The McLennan County Appraisal District (the "district"), which you represent, received a request for (1) everything in the requestor's personal property file, including information pertaining to Texas Star Records and Rita Jones Music, Inc. and information pertaining to the report done by two district appraisers on a specified date; and (2) information concerning a specified document, including "any affidavits that the [district] appraisers might have been asked to sign" pertaining to a September 2011 visit to the requestor's home. You state the district has released some information. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, we must address the requestor's assertion the district did not comply with section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental

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<sup>1</sup>Although you raise section 552.111 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information. *See Gov't Code §§ 552.301(b), (e), .302.*

body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request for information. *See id.* § 552.301(b). The district received the instant request on May 11, 2012. Accordingly, the district's ten-business day deadline was May 25, 2012. Thus, as we received the district's request for a decision on May 25, 2012, we find the district fully complied with the requirements of section 552.301(b) of the Government Code in requesting this decision. Accordingly, we address the district's arguments against disclosure of the submitted information.

Section 552.103 of the Government Code provides in part:

(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). A governmental body claiming section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information at issue. To meet this burden, a governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

You state the district received the request for information after a lawsuit involving the district and the requestor reached a final judgment. Further, you inform us the litigation is currently on appeal in the Tenth Court of Appeals. However, we find that you have failed to demonstrate how the submitted information is related to the pending litigation. Accordingly, the district may not withhold any of the submitted information under section 552.103 of the Government Code. As you claim no other exceptions to the submitted information, it must be released.

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,



Sean Opperman  
Assistant Attorney General  
Open Records Division

SO/som

Ref: ID# 460656

Enc. Submitted documents

c: Requestor  
(w/o enclosures)