



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 15, 2013

Ms. Katherine Ramos
Assistant Criminal District Attorney
Civil Section
Bexar County
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

OR2013-04387

Dear Ms. Ramos:

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# 481381.

Bexar County (the "county") received a request for information, including utility maps, pertaining to specified properties.¹ You state you have released an updated appraisal of the requestor's property to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.105 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.

Initially, we note you have not submitted the requested utility maps. Although you state the county submitted a representative sample of information, we find the submitted information

¹We note the county sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Although you also raise sections 552.101 and 552.108 of the Government Code, you have provided no arguments explaining how these exceptions are applicable to the submitted information. Therefore, we assume you no longer assert these exceptions. *See* Gov't Code §§ 552.301(e)(1)(A), .302.

is not representative of this type of information. Please be advised this open records letter applies only to the type of information you have submitted for our review. Therefore, this letter ruling 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. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information is presumed to be public). Thus, to the extent any information responsive to the requested utility maps existed when the present request was received, we assume it has been released.³ If such information has not been released, then it must be released at this time. *See id.* §§ 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 note most of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, as follows:

(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 unless made confidential under this chapter or 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;

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(1), (3). The submitted information contains completed appraisals that are subject to section 552.022(a)(1). Furthermore, the submitted information contains purchaser statements that are subject to section 552.022(a)(3). You seek to withhold the information at issue under sections 552.103 and 552.105 of the Government Code. However, sections 552.103 and 552.105 are discretionary in nature and do not make information confidential under the Act. *See 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. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential); *see also* Open Records Decision Nos. 665 at 2

³We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986).

n.5 (2000) (discretionary exceptions generally), 564 (1990) (statutory predecessor to section 552.105 subject to waiver). Thus, the county may not withhold the information at issue under section 552.103 or section 552.105. However, we will address the applicability of sections 552.103 and 552.105 for the remaining information, which is not subject to section 552.022.

Section 552.103 of the Government Code provides in pertinent 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 governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. 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.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

You inform us that, prior to the county's receipt of the request for information, the county brought a condemnation action against property owners styled *County of Bexar v. Gilbert Laubach and Francis C. Laubach*, Cause No. 2012-Ed-0045, in Probate Court No. 1, Bexar County, Texas. We therefore agree litigation was pending on the date the county received the request. You explain the remaining information relates to the pending litigation. Having reviewed your arguments and representations, we find you have established this information is related to the pending proceedings for purposes of section 552.103. Therefore, the county may withhold the remaining information pursuant to section 552.103.⁴

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

We note, however, once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

In summary, the county must release the information subject to sections 552.022(a)(1) and 552.022(a)(3) of the Government Code. The county may withhold the remaining information pursuant to section 552.103 of the Government Code.

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,



Nheka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 481381

Enc. Submitted documents

c: Requestor
(w/o enclosures)