



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 20, 2013

Mr. James R. Evans, Jr.  
Counsel For the Aransas County Appraisal District  
Hargrove and Evans, L.L.P.  
Building 3, Suite 400  
4425 MoPac South  
Austin, Texas 78735

OR2013-22254

Dear Mr. Evans:

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# 509823.

The Aransas County Appraisal District (the "district"), which you represent, received a request for the comparables the district used to evaluate tax values for the year 2013 and the tape recording of a district meeting. You inform us the district has released the requested recording to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.149 of the Government Code. You also notified the Rockport Association of Realtors (the "association") of the request and of the association's right to submit comments to this office as to why the requested information should not be released to the requestor. *See* 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 the Act in certain circumstances). We

have received comments from the association. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.103 of the Government Code provides, in relevant 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.

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 the section 552.103(a) exception applies in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the requested information is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *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. The governmental body must meet both parts of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

This office has long held that "litigation," for purposes of section 552.103, includes "contested cases" conducted in a quasi-judicial forum. *See* Open Records Decision Nos. 474 (1987), 368 (1983), 336 (1982), 301 (1982). In determining whether an administrative proceeding is conducted in a quasi-judicial forum, some of the factors this office considers are whether the administrative proceeding provides for discovery, evidence

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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.

to be heard, factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. *See* Open Records Decision No. 588 (1991).

You inform us that, prior to the district's receipt of the instant request, the requestor filed a request for arbitration concerning the valuation of his property. You have submitted documentation affirming that binding arbitration has been scheduled, and you inform us the hearing at issue is governed by Chapter 171 of the Texas Civil Practices and Remedies Code. You further state the parties exchange witness lists and exhibits, may present evidence and cross examine witnesses, and that the arbitrator will resolve factual issues. We note Chapter 171 of the Texas Civil Practices and Remedies Code allows for certain court proceedings following an arbitration. *See* Civ. Prac. & Rem. Code § 171.081. Upon application of a party that participated in the arbitration, a court may confirm, modify, correct, or vacate the arbitrator's award. *See id.* §§ 171.087, .088, .091. Further, we note a party to the arbitration may appeal the judgment or order in the same manner as an order or judgment in a civil action. *Id.* § 171.098. Based on your representations and our review, we find the arbitration constitutes litigation of a judicial or quasi-judicial nature for purposes of section 552.103. *See generally* ORD 301 (discussing meaning of "litigation" under predecessor to section 552.103). Accordingly, we find the district was a party to pending litigation on the date it received the request for information. Further, you state the information at issue relates to the issue in the pending arbitration. Upon review of your arguments and the information at issue, we find the information at issue is related to litigation involving the district that was pending on the date the request was received. Accordingly, we find the district may withhold the information at issue under section 552.103 of the Government Code.<sup>2</sup>

However, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the pending litigation is not excepted from disclosure under section 552.103, and it must be disclosed. We also note the applicability of section 552.103 ends once the litigation has been concluded.

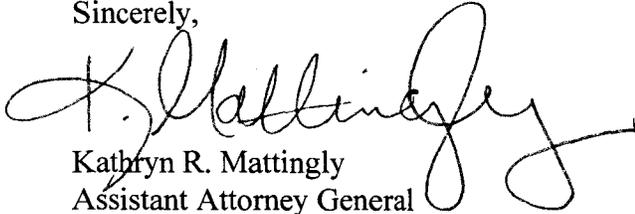
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Mattingly', written over the typed name and title.

Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/bhf

Ref: ID# 509823

Enc. Submitted documents

c: Requestor  
(w/o enclosures)