



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 13, 2014

Ms. Elizabeth Conry Davidson
Counsel for Bexar Appraisal District
926 Chulie Drive
San Antonio, Texas 78216

OR2014-02798

Dear Ms. Davidson:

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# 514058 (Bexar Appraisal District PIA # 1415).

The Bexar Appraisal District (the "district"), which you represent, received a request for the deposition testimony of a named district employee for a specified lawsuit. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. 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 (providing that interested party may submit written comments regarding why information should or should not be released).

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 that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date the governmental body received 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, 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.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See Open Records Decision No. 551 at 4 (1990).*

You state, and provide supporting documentation which demonstrates, prior to the district's receipt of the present request for information, the requestor's client filed a lawsuit styled *Texas Health Development VII-S.A. III, Ltd. v. Bexar Appraisal District*, Cause No. 2013-CI-15536, in the 288th Judicial District of Bexar County naming the district as a defendant. Based upon your representations and our review, we find the district was a party to pending litigation on the date it received the request. You contend the submitted information, which consists of the transcript for a deposition given in a different, unrelated lawsuit filed against the district, is related to the requestor's client's lawsuit. You state the release of the information at issue would provide the requestor with "information about [the requestor's] opponent in litigation that [the requestor] is currently handling." Upon review, we find you have failed to demonstrate how the submitted information is related to the pending litigation involving the requestor's client. *See Gov't Code § 552.301(e)(1)* (requiring governmental body to explain applicability of raised exception); *see also Open Records Decision Nos. 551 at 5* (attorney general will determine whether governmental body has reasonably established information at issue is related to litigation), *511 at 2 (1988)* (information "relates" to litigation under statutory predecessor if its release would impair governmental body's litigation interests). Accordingly, the district may not withhold the submitted information under section 552.103 on the basis of the pending litigation involving the requestor's client.

You also state, and provide supporting documentation which demonstrates, the lawsuit for which the deposition at issue was conducted was filed against the district in the 288th Judicial District of Bexar County before the date the district received the present request for information. Additionally, you state this lawsuit, styled *AAMHA Babcock North, L.P. v. Bexar Appraisal District*, Cause No. 2011-CI-05466, is currently pending. Based upon your

representations and our review, we find the district was a party to this pending litigation on the date it received the request. Additionally, we agree the submitted information is related to *AAMHA Babcock North, L.P. v. Bexar Appraisal District*. However, 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* ORD 551 at 4-5. Once information has been obtained by all parties to the pending or anticipated litigation, through discovery or otherwise, no section 552.103(a) 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 other parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it may not be withheld on that basis.

The requestor contends all of the parties to *AAMHA Babcock North, L.P. v. Bexar Appraisal District* have seen or had access to the submitted deposition transcript. Whether all of the parties in that case have seen or had access to the information at issue is a question of fact. This office cannot resolve disputes of fact in its decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Accordingly, we rule conditionally. If all of the parties to *AAMHA Babcock North, L.P. v. Bexar Appraisal District* have not seen or had access to the submitted information, the district may withhold it under section 552.103. In that instance, we note the applicability of section 552.103(a) ends when the litigation is concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2. However, if all of the parties to the case have seen or had access to the submitted information, it may not be withheld under section 552.103. In that instance, we will address the public availability of the submitted information.

Section 552.117(a)(1) of the Government Code applies to records a governmental body holds in an employment capacity and excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code.¹ Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024, the information we have marked must be withheld under section 552.117(a)(1). The district may

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

not withhold this information under section 552.117 if the employee did not make a timely election to keep the information confidential.

In summary, if all of the parties to *AAMHA Babcock North, L.P. v. Bexar Appraisal District* have not seen or had access to the submitted information, the district may withhold it under section 552.103 of the Government Code. If all of the parties to *AAMHA Babcock North, L.P. v. Bexar Appraisal District* have seen or had access to the submitted information and the district employee whose information we have marked timely requested confidentiality pursuant to section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. In that instance, 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.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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 514058

Enc. Submitted documents

c: Requestor
(w/o enclosures)