



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 5, 2014

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

OR2014-03718

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# 515666.

The Bexar Appraisal District (the "district"), which you represent, received a request for correspondence, documents relating to applications to tax exemption, reports, and corporate records pertaining to a specified property and tax exemptions during a specified time period, information relating to tax valuation disputes and attorney-client or attorney work product information. You claim the requested 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.

Initially, we note the submitted information contains court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). The court-filed documents we have marked are subject to section 552.022(a)(17). Although you raise section 552.103 of the Government Code, section 552.103 is a discretionary exception to disclosure and does not make information confidential under the Act. *See id.* § 552.007; *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 Nos. 665 at 2 n.5 (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 does not make information confidential for the purposes of section 552.022. Therefore, the district may not withhold the court-filed documents under section 552.103 of the Government Code. As you raise no

other exceptions to disclosure, the court-filed documents, which we have marked, must be released pursuant to section 552.022(a)(17) of the Government Code.

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 protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See id.* § 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) 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 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, 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.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and the submitted documents demonstrate, the district is engaged in litigation with the requestor's client regarding the valuation of the property at issue. You also state the district anticipates litigation regarding the exemption denial of the requestor's client's property. You explain the district denied the 2013 absolute exemption of the property and the present request for information was received by the district prior to the deadline by which the requestor's client must file a protest to the denial. You contend section 552.103 is applicable to the remaining information because "the property owner has historically filed [sic] suit on every account in which an exemption has been denied, there is ongoing litigation, and the exemption was recently denied for 2013." Upon review, we find that the district was a party to litigation and reasonably anticipated litigation regarding the property at issue on the date the request for information was received. You state, and we agree, the

remaining information is related to the pending and anticipated litigation for purposes of section 552.103. Thus, section 552.103 is generally applicable to the submitted information.

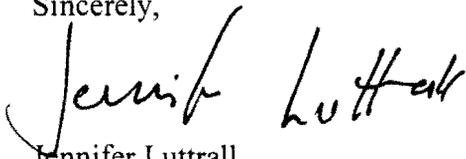
However, we note the opposing party in the anticipated litigation has seen or had access to some of the information at issue. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* ORD 551 at 4-5. Thus, if the opposing party has seen or had access to information relating to litigation, through discovery or otherwise, then there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Therefore, to the extent the opposing party has seen or had access to the remaining information, it may not be withheld under section 552.103. To the extent the opposing party has not seen or had access to the remaining information, the district may withhold the remaining information under section 552.103 of the Government Code. We also note the applicability of section 552.103 ends once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the court-filed documents, which we have marked, must be released pursuant to section 552.022(a)(17) of the Government Code. To the extent the opposing party has not seen or had access to the remaining information, the district may withhold the remaining information under section 552.103 of the Government Code. To the extent the opposing party has seen or had access to the remaining 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.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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/som

Ref: ID# 515666

Enc. Submitted documents

c: Requestor  
(w/o enclosures)