



January 13, 2015

Ms. Julie P. Doshier  
Counsel for the Atascosa County Appraisal District  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
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Dallas, Texas 75201

OR2015-00656

Dear Ms. Doshier:

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# 549816 (File Reference #68892).

The Atascosa County Appraisal District (the "district"), which you represent, received a request for the audio recordings from specified hearings pertaining to seven specified accounts. 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.

Initially, we note the submitted information consists of audio recordings of Appraisal Review Board hearings (the "hearings"). Section 41.66(d) of the Tax Code states "[e]xcept as provided by Subsection (d-1), hearings conducted as provided by this chapter are open to the public." Tax Code § 41.66(d). Section 41.66(d-1) states in pertinent part,

Notwithstanding Chapter 551, Government Code, the appraisal review board shall conduct a hearing that is closed to the public if the property owner or the chief appraiser intends to disclose proprietary or confidential information at the hearing that will assist the review board in determining the protest. The review board may hold a closed hearing under this subsection only on a joint motion by the property owner and the chief appraiser.

*Id.* § 41.66 (d-1). We also note section 551.022 of the Open Meetings Act, chapter 551 of the Government Code, expressly provides that the "minutes and tape recordings of an open meeting are public records and shall be available for public inspection and copying on

request to the governmental body's chief administrative officer or the officer's designee." Gov't Code § 551.022. In this instance, we are unable to determine whether the hearings were conducted as open hearings pursuant to subsection 41.66(d). Accordingly, we must rule conditionally. If the hearings were conducted as open hearings pursuant to subsection 41.66(d), then the submitted audio recordings are recordings of open meetings of the district's Appraisal Review Board and are subject to section 551.022. You seek to withhold the submitted audio recordings under section 552.103 of the Government Code. As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, if the hearings were conducted as open hearings under subsection 41.66(d), then the district must release the submitted audio recordings pursuant to section 551.022 of the Government Code. To the extent the hearings were not conducted as open hearings under subsection 41.66(d), we address your argument against disclosure of the submitted audio recordings under section 552.103 of the Government Code.

Section 552.103 of the Government Code provides 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). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception 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 provide documentation demonstrating, prior to the district's receipt of the present request for information, the owners of the property related to all of the specified account numbers filed petitions in district court. You further state the submitted audio

recordings are related to this pending civil litigation because the orders that are the subject of the litigation were entered during the hearings recorded on the submitted audio recordings. Based on your representations and our review, we agree litigation to which the district is a party was pending on the date the district received the present request for information. We further find the submitted information relates to the pending litigation. Thus, we conclude the district may withhold the submitted information under section 552.103.

We note 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, once information has been obtained by all parties to the pending 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). Further, the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

In summary, if the hearings were conducted as open hearings pursuant to subsection 41.66(d) of the Tax Code, the district must release the submitted audio recordings pursuant to section 551.022 of the Government Code. If the hearings were not conducted as open hearings pursuant to subsection 41.66(d) of the Tax Code, the district may withhold the submitted audio recordings under 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.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,



Alley Latham  
Assistant Attorney General  
Open Records Division

AKL/dls

Ref: ID# 549816

Enc. Submitted documents

c: Requestor  
(w/o enclosures)