



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 27, 2017

Ms. Laura J. Monroe
Counsel for Lubbock Central Appraisal District
Perdue, Brandon, Fielder, Collins & Mott, L.L.P.
P.O. Box 817
Lubbock, Texas 79408

OR2017-24558

Dear Ms. Monroe:

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# 682050.

The Lubbock Central Appraisal District (the "district"), which you represent, received a request for information pertaining to thirteen specified properties. You state you will release some information. We understand you have no information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Centre Lubbock TX LLC; Suites Lubbock TX LLC; TTUC, LLC; and Vesper Courtyard, LLC ("Vesper"). Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990)

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *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), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

(statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Vesper. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

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 governmental body claiming section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information, and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

You explain the information at issue pertains to four pending lawsuits challenging the district's appraisal values of the four properties at issue. You state, and provide documentation showing, prior to the district's receipt of the instant request, the following lawsuits were filed against the district and are currently pending: *Centre Lubbock TX LLC v. Lubbock County Appraisal District*, Cause No. 2016522226, filed in the 72nd District Court of Lubbock County, Texas; *TTUC, LLC v. Lubbock County Appraisal District*, Cause

²We 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.

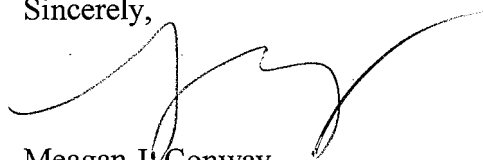
No. 2016522133, filed in the 237th District Court of Lubbock County, Texas; *Suites Lubbock TX LLC v. Lubbock County Appraisal District*, Cause No. 2016522224, filed in the 72nd District Court of Lubbock County, Texas; and *Vesper Fountains, LLC v. Lubbock County Appraisal District*, Cause No. 2016521851-A, filed in the 237th District Court of Lubbock County, Texas. Therefore, we agree litigation was pending on the date the district received the present request for information. You also state the information at issue pertains to the substance of the lawsuits claims. Based on your representations and our review, we find the information at issue is related to pending litigation. Therefore, we conclude the district may withhold the submitted information under section 552.103 of the Government Code.³

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/sb

³As our ruling is dispositive, we need not address Vesper's arguments against disclosure of this information.

Ref: ID# 682050

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)