



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 13, 2017

Mr. Michael Phelps  
Senior Paralegal  
Harris County Appraisal District  
P.O. Box 920975  
Houston, Texas 77292-0975

OR2017-28291

Dear Mr. Phelps:

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# 687839 (Reference No. 17-3970A).

The Harris County Appraisal District (the "district") received a request for all appraisals prepared by two named individuals during a specified time period. You state the district will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.111, and 552.155 of the Government Code and privileged under Texas Rule of Civil Procedure 192.5. We have considered your arguments and reviewed the submitted representative sample of information.<sup>1</sup> We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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

---

<sup>1</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

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). The governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is 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). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

You state, and provide documentation showing, several different property tax lawsuits filed against the district were pending in the Judicial District Courts of Harris County, Texas when the district received the request for information. Therefore, we agree litigation was pending when the district received the instant request. You state the pending litigation relates to the information at issue in the request. Thus, we also find you have established the submitted information is related to the pending litigation for purposes of section 552.103(a).

You inform us, however, the opposing parties have seen or had access to some of the information at issue, specifically, the information submitted in Exhibit C. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. *See* ORD 551 at 4-5. Thus, once the opposing party has seen or had access to information relating to the litigation through discovery or otherwise, 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, with the exception of Exhibit C which you inform us the opposing parties have seen or had access to, the district may withhold the submitted information under section 552.103 of the Government Code.<sup>2</sup> We note the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350(1982).

---

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

You contend some of the information in Exhibit C is subject to section 552.107(2) of the Government Code. Section 552.107(2) of the Government Code provides information is excepted from disclosure if “a court by order has prohibited disclosure of the information.” Gov’t Code § 552.107(2). You have submitted a copy of an Agreed Protective Order you assert applies to some information in Exhibit C. However, as noted on the order, it has neither been signed by the opposing party, signed by the presiding judge, nor filed with the court. Thus, we conclude the district has not established a court has prohibited disclosure of any of the information at issue to the requestor. Therefore, we find the district may not withhold any of the remaining information at issue from the requestor under section 552.107(2) of the Government Code.

Section 552.155 of the Government Code provides, in relevant part, as follows:

(a) Except as provided by Subsection (b) or (c), a photograph that is taken by the chief appraiser of an appraisal district or the chief appraiser’s authorized representative for property tax appraisal purposes and that shows the interior of an improvement to property is confidential and excepted from the requirements of Section 552.021.

*Id.* § 552.155(a). You state Exhibit C includes photographs of the interior of subject properties and none of the exceptions in section 552.155(b), (c), or (c-1) apply in this instance. However, you do not explain whether the photographs were taken of an improvement to the properties by the chief appraiser of an appraisal district or the chief appraiser’s authorized representative for property tax appraisal purposes. Thus, we rule conditionally. To the extent the photographs were not taken of an improvement to the properties by the chief appraiser of an appraisal district or the chief appraiser’s authorized representative for property tax appraisal purposes, they are not subject to section 552.155 and the district may not withhold those photographs in Exhibit C on that basis. To the extent the photographs were taken of an improvement to the properties by the chief appraiser of an appraisal district or the chief appraiser’s authorized representative for property tax appraisal purposes, we find the district must withhold those photographs in Exhibit C under section 552.155 of the Government Code.

We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

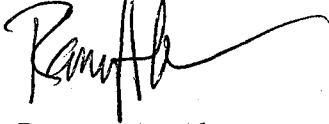
In summary, except for Exhibit C, the district may withhold the submitted information under section 552.103 of the Government Code. To the extent the photographs in Exhibit C were taken of an interior to an improvement to the properties at issue by the chief appraiser of an

appraisal district or the chief appraiser's authorized representative for property tax appraisal purposes, we find the district must withhold those photographs in Exhibit C under section 552.155 of the Government Code. The district must release the remaining information, but may only release any copyrighted information in accordance with copyright law.

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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/gw

Ref: ID# 687839

Enc. Submitted documents

c: Requestor  
(w/o enclosures)