



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 26, 2018

Ms. Julie P. Doshier
Counsel for the Erath County Appraisal District
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 North Akard Street, Suite 1800
Dallas, Texas 75201

OR2018-04390

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# 696947 (Ref. No. 93966).

The Erath County Appraisal District (the "district"), which you represent, received three requests from the same requestor for appraisal information related to three specified properties. 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.

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). 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 (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. *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.*); 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). *See* ORD 551.

This office has long held “litigation,” for purposes of section 552.103, includes “contested cases” conducted in a quasi-judicial forum. *See* Open Records Decision Nos. 474 (1987), 368 (1983), 336 (1982), 301 (1982). In determining whether an administrative proceeding is conducted in a quasi-judicial forum, some of the factors this office considers are whether the administrative proceeding provides for discovery, evidence to be heard, factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. *See* Open Records Decision No. 588 (1991).

You state, prior to the date the district received the instant request, the specified properties were subject to an appeal of the Erath County Appraisal Review Board's determination. You inform us the appeal is conducted through binding arbitration. You state the arbitration is governed by the rules set forth in section 9.804 of title 34 of the Texas Administrative Code. *See* 34 T.A.C. § 9.804 (governing arbitration of Appraisal Review Board determinations). You further inform us the parties may be represented by counsel, evidence may be presented and briefed by the parties, the arbitrator is the judge of the relevance and materiality of such evidence, and witnesses may be required to testify under oath. Thus, you argue this arbitration constitutes litigation of a judicial or quasi-judicial nature for purposes of section 552.103. *See generally* ORD 301 (discussing meaning of “litigation” under predecessor to section 552.103).

Based on your representations and our review, we find you have demonstrated the arbitration at issue is conducted in a quasi-judicial forum and, thus, constitutes litigation for purposes of section 552.103. You explain the requested information relates to the pending litigation because it relates to the appraisals which are being appealed in arbitration. Accordingly, we find litigation was pending when the district received the request for information and the submitted information is related to the pending litigation for the purposes of section 552.103. Therefore, the district may withhold the submitted information under section 552.103 of the Government Code.

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. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing parties in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

Ref: ID# 696947

Enc. Submitted documents

c: Requestor
(w/o enclosures)