



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 14, 2020

Mr. Braden W. Metcalf  
Counsel for the Tarrant Appraisal District  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
500 North Akard Street, Suite 1800  
Dallas, Texas 75201

OR2020-31191

Dear Mr. Metcalf:

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# 858641 (TM 118257).

The Tarrant Appraisal District (the "district"), which you represent, received a request for six categories of information pertaining to six specified accounts and properties. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note portions of the submitted information, which we have indicated, are not responsive to the instant request because they were created after the date the request was received. The district need not release non-responsive information in response to this request, and this ruling will not address that information.

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).*

The district states, and provides documentation demonstrating, prior to its receipt of the instant request, a lawsuit styled *AKMK Properties, LLC v. The Tarrant Appraisal District*, Cause No. 352-301674-18, was filed and is currently pending against the district. Therefore, we agree litigation was pending on the date the district received the present request for information. The district also states the responsive information pertains to the substance of the lawsuit. Based on these representations and our review, we find the responsive information is related to the pending litigation. Therefore, we conclude the district may generally withhold the responsive information under section 552.103 of the Government Code.

Generally, however, once information has been obtained by all parties to the litigation though 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. In this instance, some of the information at issue may have been provided to the district by the opposing party or shared with the opposing party. Thus, all parties have already seen this information. As such, we conclude, to the extent the responsive information was provided to the district by the opposing party or shared with the opposing party, the information at issue may not be withheld under section 552.103. The district may withhold the remaining information under section 552.103.<sup>1</sup> Further, 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).*

In summary, to the extent responsive information was not provided to the district by the opposing party or shared with the opposing party, the district may withhold the responsive

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<sup>1</sup> As our ruling on this information is dispositive, we need not address your remaining argument against its disclosure.

information under section 552.103 of the Government Code. The district must release any remaining responsive information.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/jxd

Ref: ID# 858641

Enc. Submitted documents

c: Requestor  
(w/o enclosures)