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ATTORNEY GENERAL OF TEXAS

March 4, 2022

Mr. James Wang
Legal Services Division
Harris County Appraisal District
P.O. Box 920975
Houston, Texas 77292-0975

OR2022-06594

Dear Mr. Wang:

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# 933210 (Ref. No. 21-5873).

The Harris County Central Appraisal District (the "district") received a request for certain information pertaining to twenty-four specified account numbers for a specified tax year.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.149 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by an interested third party. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor specifically excluded from his request information pertaining to "land sales and improved sales" that was used as evidence in district appraisal review board hearings involving the account numbers specified in the request. Thus, this type of information is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request and the district is not required to release such information in response to the present request.²

¹ You state, and submit documentation demonstrating, the district sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

² As we are able to make this determination, we need not address your arguments against disclosure of this information.

Next, we note the interested party asserts the responsive information is subject to section 552.022(a) of the Government Code, which provides, in relevant part:

[T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; [and]

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Id. § 552.022(a)(1), (3). Upon review, we find the information at issue does not consist of a completed report, audit, evaluation, or investigation made of, for, or by the district that is subject to section 552.022(a)(1). Additionally, we find the information at issue does not consist of information in an account, contract, or voucher relating to the receipt or expenditure of funds by the district that is subject to section 552.022(a)(3). Therefore, the responsive information is not subject to section 552.022(a) of the Government Code, and we will address the district's arguments against disclosure of the information at issue.

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.

Id. § 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 state, and provide documentation demonstrating, prior to the district's receipt of the present request, multiple lawsuits were filed and are currently pending against the district. You also state the information you indicated pertains to the substance of the lawsuits' claims. Based on these representations and our review, we find litigation was pending on the date the district received the present request and the information at issue is related to the pending litigation. Accordingly, the district may withhold the responsive information you indicated under section 552.103 of the Government Code.³

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. 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).*

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 22.27(a) of the Tax Code, which provides, in relevant part:

Rendition statements, real and personal property reports, attachments to those statements and reports, and other information the owner of property provides to the appraisal office in connection with the appraisal of the property, including income and expense information related to a property filed with an appraisal office and information voluntarily disclosed to an appraisal office or the comptroller about real or personal property sales prices after a promise it will be held confidential, are confidential and not open to public inspection. The statements and reports and the information they contain about specific real or personal property or a specific real or personal property owner and information voluntarily disclosed to an appraisal office about real or personal property sales prices after a promise it will be held confidential may not be disclosed to anyone other than an employee of the appraisal office who appraises property except as authorized by Subsection (b) of this section.

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Tax Code § 22.27(a). You inform us the district is an “appraisal office” for purposes of section 22.27(a). You state the information you marked was provided by property owners in connection with the appraisal of property. Further, you state the requestor has not provided the required authorization to establish a right of access to the information at issue; thus, the exceptions in section 22.27(b) do not apply, in this instance. *See id.* § 22.27(b)(2). Based upon your representations and our review, we find the district must withhold the responsive information you marked under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code.⁴

In summary, the district may withhold the responsive information you indicated under section 552.103 of the Government Code. The district must withhold the responsive information you marked under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. The district must release the 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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jxd

Ref: ID# 933210

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)

⁴ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.