



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 31, 2022

Ms. Elizabeth Conry Davidson  
Counsel for the Bexar Appraisal District  
100 Northwest Loop 410, Suite 615  
San Antonio, Texas 78216

OR2022-26506

Dear Ms. Davidson:

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# 966982.

The Bexar Appraisal District (the "district"), which you represent, received a request for several categories of information pertaining to specified properties, a specified manual, and a specified lawsuit. You state some information has been made available to the requestor. You claim some of the submitted information is subject to section 552.027 of the Government Code and copyright law. You also claim some of the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. Additionally, the district states release of the submitted information may implicate the proprietary interests of Harris McGovern ("Harris McGovern"). Accordingly, you provide documentation showing the district notified Harris McGovern of the request for information and of its right to submit arguments to this office. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (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 considered the submitted arguments and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Section 552.027 of the Government Code provides the Act does not require a governmental body to allow the inspection of information in a commercial publication purchased or acquired by the governmental body for research purposes if the publication is commercially available to the public. *See id.* § 552.027(a). You state the submitted commercial valuation

manual was purchased by the district in connection with the purchase of the valuation service at issue. You state the information at issue is commercially available and could be purchased from the copyright holder. Accordingly, based on your representations, we conclude the submitted manual is commercially available information that falls within the scope of section 552.027 and need not be released to the requestor.<sup>1</sup>

Next, you note some of the submitted information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2020-30924 (2020). We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, the district must rely on Open Records Letter No. 2020-30924 as a previous determination and release or withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not subject to the previous determination, we will consider your arguments against disclosure.

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). The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception applies 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 requested information

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<sup>1</sup> As we are able to make this determination, we need not address the arguments against disclosure of this information.

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.); ORD 551 at 4. The governmental body must meet both parts of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

This office has long held that “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 inform us, prior to the district’s receipt of the instant request, the requestor filed appeals with the district’s appraisal review board (the “board”) concerning property tax valuation for the specified properties. You state the appeals are pending. We understand the hearings at issue are governed by chapter 41 of the Texas Tax Code and that the protesting party in the hearings at issue may conduct limited discovery, a record is made, and the board will resolve factual issues. We note each party to a hearing may present evidence and cross-examine witnesses. *See* Tax Code § 41.66(b). Further, we note a party to the protest may appeal the board’s order in the district court. *Id.* § 41.47(e). Based on your representations and our review, we find the protest hearings at issue constitute 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). Accordingly, we find the district was a party to pending litigation on the date it received the request for information. Further, you state, and we agree, the information at issue relates to the pending protest hearing. Upon review of your arguments and the information at issue, we find the information at issue is related to litigation involving the district that was pending on the date the request was received. Thus, we find the district may withhold the remaining information under section 552.103 of the Government Code.<sup>2</sup>

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).

In summary, the submitted manual is commercially available information that falls within the scope of section 552.027 and need not be released to the requestor. To the extent the

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

submitted information is identical to the information previously requested and ruled upon by this office, the district must rely on Open Records Letter No. 2020-30924 as a previous determination and release or withhold the identical information in accordance with that ruling. The district may withhold the remaining information under section 552.103 of the Government Code.

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,

Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/mo

Ref: ID# 966982

Enc. Submitted documents

c: Requestor  
(w/o enclosures)