



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

March 30, 2006

Mr. James R. Evans, Jr.  
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P.O. Box 17428  
Austin, Texas 78760

OR2006-03181

Dear Mr. Evans:

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# 245251.

The Concho County Appraisal District (the "district"), which you represent, received a request for "[all] detailed mineral appraisal data and [all] supporting mineral appraisal data for the 2004 and 2005 appraisal years." You state that the request may involve the third-party proprietary interests of Capitol Appraisal Group ("Capitol"). Accordingly, you inform us that pursuant to section 552.305 of the Government Code, the district notified Capitol of the request for information and of its right to submit arguments explaining why the information concerning the company should not be released. *See Gov't Code* § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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<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

Initially, we must address the district's obligations under the Act. Section 552.301(b) of the Government Code provides that a governmental body that wishes to withhold requested information must "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request." Gov't Code § 552.301(b). Pursuant to section 552.301(e) of the Government Code, a governmental body must, within fifteen business days of receiving the request, submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). You inform us that the district received this request on November 23, 2005. However, you did not request a ruling from our office until January 23, 2006. Consequently, we find that the district failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information and third party interests are at stake, we will consider your arguments against disclosure.

We understand you to state that most, if not all, of the requested information was prepared for the district by Capitol, an outside appraiser. Therefore, this information is subject to section 25.01(c) of the Tax Code, which provides as follows:

A contract for appraisal services for an appraisal district is invalid if it does not provide that copies of the appraisal, together with supporting data, must be made available to the appraisal district and such appraisals and supporting data shall be public records. "Supporting data" shall not be construed to include personal notes, correspondence, working papers, thought processes, or any other matters of a privileged or proprietary nature.

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office.

Tax Code § 25.01(c). The effect of this provision is to make public the appraisal and “supporting data” which were provided to the district. *See* Attorney General Opinion JC-0424 at 2 (2001) (section 25.01(c) provides that certain information used or created by appraisal firm must be made available to appraisal district and deems that information public). Exceptions to disclosure under the Act generally do not apply to information that is made public by other statutes, such as section 25.01(c). *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, to the extent the information at issue constitutes an appraisal or supporting data for purposes of section 25.01(c), such information is a public record which must be released to the requestor. *See* Tax Code § 22.27(b)(6) (information made confidential by section 22.27(a) may be disclosed if and to the extent the information is required to be included in a public document or record that the appraisal office is required to prepare or maintain). To the extent the information at issue does not constitute an appraisal or supporting data for purposes of 25.01(c), we will address the submitted arguments against disclosure.

Section 552.305 of the Government Code allows an interested third party ten business days from the date of its receipt of the governmental body’s notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov’t Code § 552.305(d)(2)(B). However, as of the date of this letter, we have not received arguments from Capitol for withholding the information at issue. Therefore, we have no basis to conclude that the release of any portion of the requested information would harm the proprietary interests of Capitol. *See id.* § 551.110(b); Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish prima facie case that information is trade secret). Accordingly, we conclude that the district may not withhold any portion of the information at issue on the basis of any proprietary interest that Capitol may have in the information.

Section 552.101 of the Government Code excepts from 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. You state that a portion of the information at issue constitutes information that is confidential under section 22.27 of the Texas Tax Code. Section 22.27 states in pertinent part as follows:

(a) 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.

Tax Code § 22.27(a). The submitted records that we have marked contain information about specific real or personal property and property owners. You state that this information was obtained from property owners under promises of confidentiality for the purpose of completing appraisals. Based on your representation that the submitted information was obtained under promises of confidentiality and our review, we conclude that the submitted information that we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code unless it is made public by section 25.01 of the Tax Code.

Finally, the district asserts that the information at issue need not be released in the format desired by the requestor. We understand that the requestor is requesting the information in a format that he will be able to readily import into a database. The district informs us that it does not have the ability to provide the information in the requested electronic format and that the district has no right of access the information in the requested format. Accordingly, because the district does not have the technological capability to provide the information in the requested format, and because the district does not have a right of access to that information in the requested format, we find that the district need not release the information at issue in the requested electronic format. *See* Gov't Code §§ 552.228(a) (the Act requires a governmental body to provide a "suitable copy" of public information), .228(b) (a governmental body must provide requested information in an electronic format if the governmental body has the technological ability to do so, it is not required to purchase software or hardware to do so, and the provision of the information will not violate any copyright agreement).

In summary, to the extent that the information we have marked is not subject to section 25.01(c) of the Tax Code, then such information must be withheld under section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code. The remaining information at issue must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Matthew T. McLain  
Assistant Attorney General  
Open Records Division

MM/jh

Ref: ID# 245251

Enc. Submitted documents

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(w/o enclosures)