



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 29, 2007

Ms. Alison Holland  
Olson & Olson L.L.P.  
For Harris County Appraisal District  
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2727 Allen Parkway  
Houston, Texas 77019

OR2007-00978

Dear Ms. Holland:

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# 270164.

The Harris County Appraisal District (the "district"), which you represent, received a request for 2006 appraisal review board protest hearing files concerning five named business entities. You inform us that the district has no responsive information concerning Lyondell, Pasadena Refining Systems, or Shell Oil Company.<sup>1</sup> You state some of the requested information either has been or will be released. You have submitted information that you claim is excepted from disclosure under sections 552.101, 552.110, and 552.111 of the Government Code. You also contend that some of the submitted information is subject to section 552.027 of the Government Code. Additionally, you inform us that CoStar Realty Information, Inc. ("CoStar"), Exxon Mobil Corporation ("Exxon Mobil"), and Valero were notified of this request for information and of their right to submit arguments to this office as to why the

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<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

requested information should not be released.<sup>2</sup> We received correspondence from attorneys for CoStar and Exxon Mobil. We have considered all of the submitted arguments and have reviewed the submitted information.

We note that an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code 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). As of the date of this decision, this office has received no correspondence from Valero. Thus, Valero has not demonstrated that any of the submitted information is confidential or proprietary for the purposes of the Act. *See* Gov't Code §§ 552.101, .110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

Next, we address the district's claim that information obtained from CoStar is subject to section 552.027 of the Government Code. Section 552.027 provides as follows:

(a) A governmental body is not required under [the Act] to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

Gov't Code § 552.027. Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. The legislative history of this provision notes that section 552.027 should exclude from the definition of public information

books and other materials that are also available as research tools elsewhere *to any member of the public*. Thus, although public library books are available for public use, the library staff will not be required to do research or make copies of books for members of the public.

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<sup>2</sup>*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

INTERIM REPORT TO THE 74TH LEGISLATURE OF THE HOUSE STATE AFFAIRS COMM., 74th Leg., R.S., SUBCOMMITTEE ON OPEN RECORDS REVISIONS 9 (1994) (emphasis added). Thus, section 552.027 excludes commercially available research material from the definition of “public information.”

The district states that the information submitted as Exhibit D is commercially available from CoStar. CoStar informs us, however, that the information in question “is made available to subscribers or to those who pay for ad-hoc access, in each case subject to the terms of written or online license agreements that preclude a licensee like the [district] from disseminating the content from CoStar to an unlicensed third party like [the requestor] or otherwise making such content from CoStar publicly available.” Where access to information is limited to certain persons, such information cannot be said to be available “to any member of the public.” We therefore conclude that the information in Exhibit D does not fall within the scope of section 552.027 of the Government Code. Accordingly, that information is “public information” that must be released unless it falls within an exception to public disclosure. See Gov’t Code § 552.002.

CoStar argues that the district must withhold Exhibit D under section 552.110 of the Government Code. Section 552.110 protects the proprietary interests of private parties with respect to two types of information: (1) “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision,” and (2) “commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.” Gov’t Code § 552.110(a)-(b).

The Texas Supreme Court has adopted the definition of a “trade secret” from section 757 of the Restatement of Torts, which holds a “trade secret” to be

any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business . . . . A trade secret is a process or device for continuous use in the operation of the business . . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); see also *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958). If the governmental body takes no position on the application of the “trade secrets” aspect of section 552.110 to the information at issue, this office will accept a private person’s claim for exception as valid under section 552.110(a) if the person establishes a *prima facie* case for the exception and no one submits an argument that rebuts

the claim as a matter of law.<sup>3</sup> *See* Open Records Decision No. 552 at 5 (1990). However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that the information meets the definition of a trade secret, and the necessary factors have been demonstrated to establish a trade secret claim. *See* Open Records Decision No. 402 (1983).

Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

CoStar asserts that the information in Exhibit D constitutes a trade secret under section 552.110(a). CoStar also contends that Exhibit D is excepted from disclosure under section 552.110(b). Having considered these arguments, we conclude that CoStar has made the specific factual demonstration required by section 552.110(b) that release of the information at issue would cause the company substantial competitive harm. Therefore, the district must withhold Exhibit D under section 552.110 of the Government Code.

Lastly, we address the public availability of the information submitted as Exhibit B. The district states that most or all of that information was prepared for the district by Capitol Appraisal Group, Inc. ("Capitol"), an outside appraiser. We note that information prepared for the district by Capitol 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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<sup>3</sup>The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

Tax Code § 25.01(c). The effect of section 25.01(c) is to make public any appraisal and “supporting data” that were provided to the district by Capitol. *See* Attorney General Opinion JC-0424 at 2 (2001) (Tax Code § 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). Although the district and Exxon Mobil assert that the information in Exhibit B is excepted from disclosure under sections 552.101, 552.110, and 552.111 of the Government Code, we note that 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 that the information in Exhibit B constitutes an appraisal or supporting data for the purposes of section 25.01(c), such information is a public record that must be released to the requestor. *See* Tax Code § 22.27(b)(6) (information made confidential by Gov’t Code § 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 that the information in Exhibit B does not constitute an appraisal or supporting data for purposes of 25.01(c), we will address the parties’ arguments against disclosure.

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 exception encompasses information that other statutes make confidential. Both the district and Exxon Mobil raise section 552.101 in conjunction with section 22.27 of the Tax Code. Section 22.27(a) provides 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). We understand that the district is an “appraisal office” for purposes of section 22.27. The district states that the information in Exhibit B was submitted to the appraisal review board of the district in connection with protest hearings. The district represents to this office that the information in question was voluntarily disclosed to the district by Exxon Mobil and Valero pursuant to an understanding that the information would not be subject to public disclosure. Based on these representations, we conclude that the district must withhold the information in Exhibit B under section 552.101 of the Government

Code in conjunction with section 22.27 of the Tax Code, except to the extent that the information is made public by section 25.01(c) of the Tax Code.

In summary: (1) the district must withhold the information in Exhibit D under section 552.110(b) of the Government Code; (2) to the extent that the information in Exhibit B constitutes an appraisal or supporting data for the purposes of section 25.01(c) of the Tax Code, such information is a public record that must be released to the requestor; and (3) to the extent that the information in Exhibit B is not made public by section 25.01 of the Tax Code, the district must withhold that information under section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code. As we are able to make these determinations, we do not address the parties' other arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/jww

Ref: ID# 270164

Enc: Submitted documents

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