



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2008

Mr James R. Evans, Jr.
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Austin, Texas 78735

OR2008-06737

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# 310311.

The Rockwall Central Appraisal District (the "appraisal district"), which you represent, received a request for information pertaining to the annual agricultural exemption applications for two specified parcels of land. You state that you will provide the requestor with a portion of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. You also state that you have notified the owners of the parcels of land of this request for information. The attorney representing the owners of the parcels of land, Burns Land Holdings, Ltd. and Brantley Burns (the "Burns"), has responded and argues that the information at issue is not subject to the Act, or in the alternative, is excepted from disclosure under section 552.101 of the Government Code. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Section 552.002(a) of the Act provides:

(a) In this chapter, "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Information is generally subject to the Act when it is held by a governmental body and it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties. *See* Open Records Decision No. 635 (1995). Thus, virtually all information in the physical possession of a governmental body is public information that is encompassed by the Act. Gov't Code § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). In this instance, the information at issue consists of two applications to the appraisal district for open space land valuation. The Burns assert that "non-governmentally created documents should not be considered to be a category of 'public information.'" Further, the Burns argue that the applications at issue "are not government created documents, but instead are documents created by individuals that do not fall within any category of 'public information.'" However, there is no requirement that a document must be created by a governmental body in order for the document to constitute public information. Having considered the Burns' arguments, we find that the applications constitute information that the appraisal district collected, assembled, and maintains in connection with the transaction of official business. *See* Gov't Code § 552.002(a)(1). Thus, we find that the information at issue constitutes public information as defined by section 552.002 of the Government Code.

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. Section 552.101 encompasses information made confidential by other statutes. You inform us that the appraisal district is charged with administering special valuations for certain types of agricultural property, including land designated for agricultural use and open space land. *See* Tex. Const. art. VIII, §§ 1-d, 1-d-1. You state that a property owner seeking a special valuation must submit an application, and that the requirements of each application are contained in different subchapters of the Tax Code, and contain different requirements for valuation. Subchapter C of chapter 23 of the Tax Code addresses land designated for agricultural use, while subchapter D addresses qualified open space land. You note that under subchapter C, section 23.45 provides "[a]n application for agricultural designation filed with a chief appraiser is confidential and not open to public inspection." Tax Code § 23.45(a). As you acknowledge, subchapter D contains no similar provision. The applications at issue are open space land valuation applications filed under subchapter D. You argue that "the broad wording of section 23.45 may make information contained in an application filed under subchapter D confidential." We disagree. We find that section 23.45(a) applies only to an application filed under subchapter C. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality). Accordingly, we find that section 23.45(a) of the Tax Code is not applicable to the information at issue, and it may not be withheld under section 552.101 of the Government Code on that basis.

Next, the appraisal district asserts that the information at issue is excepted from disclosure under section 552.110(b) because disclosure would cause substantial competitive harm to the property owners to which the information pertains. Section 552.110(b) protects "[c]ommercial 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(b). This exception to disclosure 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. *Id.* § 552.110(b); *see also National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999). The appraisal district asserts that releasing the “information provided in the application for open-space valuation might enable the owner’s competitors to examine proprietary information otherwise unavailable.” After reviewing your arguments and the submitted information, however, we find that the appraisal district has made only conclusory allegations that substantial competitive injury would likely result from release of the information at issue. Furthermore, we note that the Burns have not argued that release of the submitted information would cause them substantial competitive harm. Accordingly, we determine that none of the information at issue is excepted from disclosure under section 552.110(b) of the Government Code. As no other exceptions to disclosure are raised, the appraisal district must release the submitted information to the requestor.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

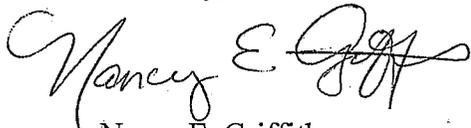
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental

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,



Nancy E. Griffiths
Assistant Attorney General
Open Records Division

NEG/jb

Ref: ID# 310311

Enc. Submitted documents

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