



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 13, 2009

Mr. Joseph T. Longoria
Perdue, Brandon, Fielder, Collins & Mott, L.L.P.
1235 North Loop West, Suite 600
Houston, Texas 77008

OR2009-06487

Dear Mr. Longoria:

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# 341296.

The Howard County Appraisal District (the "district"), which you represent, received a request for six categories of information pertaining to the appraisal of a specified entity occurring in the years 2006, 2007, and 2008. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.148 of the Government Code.¹ You also state that you notified Capitol Appraisal Group, Inc. ("Capitol") of the district's receipt of the request for information and of Capitol's right to submit arguments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d) (requiring governmental body to notify person whose proprietary information is requested); *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 to disclosure in certain circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also considered comments submitted by the requestor. *See* Gov't

¹Although the district also claims that the requested information is excepted from disclosure under section 552.305, we note that section 552.305 is not an exception to disclosure; instead, it permits a governmental body to decline to release information for the purpose of requesting an attorney general decision if it believes that a person's privacy or property interests may be involved. *See* Gov't Code § 552.305(a); Open Records Decision No. 542 at 1-3 (1990) (discussing statutory predecessor).

²We 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

Code § 552.304 (providing that an interested party may submit comments stating why information should or should not be released).

Initially, we note that you have not submitted for review information responsive to the portion of the request seeking appraisal records and supporting data related to real property. You state that information responsive to the request is collected and maintained by a private appraisal firm, Capitol, in accordance with a contractual agreement between the district and Capitol. You further state that Capitol "gathers and maintains" all such information and that the information is not "disclosed or provided" to the district. We note, however, section 25.01(c) of the Tax Code provides "[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." *See* Tax Code § 25.01(c). Therefore, to the extent records relating to real property existed on the date the district received this request, we assume you have released them. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. The requestor asserts that the district failed to comply with section 552.301(e-1) of the Government Code, which requires the district to send to the requestor a copy of its comments submitted to this office pursuant to section 552.301(e)(1)(A). *Id.* § 552.301(e-1). Further, section 552.301(e) requires a governmental body to submit to this office within fifteen business days of receiving the request (1) general 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). You state that the district received the request on February 5, 2009. However, the district did not submit the responsive information or a representative sample of the responsive information until April 24, 2009. Thus, the district failed to comply with the procedural requirements mandated by section 552.301.

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 the governmental body demonstrates a compelling reason 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

to the extent that those records contain substantially different types of information than that submitted to this office.

make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because sections 552.101 and 552.148 of the Government Code can provide compelling reasons to withhold information, we will address the applicability of these exceptions to the requested 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." This section encompasses information protected by other statutes. Section 22.27(a) of the Tax Code provides the following:

(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.

(b) Information made confidential by this section may be disclosed:

...

(6) 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[.]

Tax Code § 22.27(a), (b)(6). You assert the submitted rendition statement is confidential under section 27.27(a). We understand the district is an appraisal office for purposes of section 22.27. You state the district routinely promises confidentiality to property owners providing information to the district in connection with the appraisal of the property. We find the submitted document consists of a statement or report about specific personal property that was voluntarily disclosed to the district by the personal property owner after a promise of confidentiality. Thus, the submitted information is confidential under section 22.27 of the Tax Code. However, we note section 22.27(b)(6) states 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 the district is required to prepare or maintain. *See id.* § 22.27(b)(6).

The requestor raises section 23.011(3) of the Tax Code, which describes the cost method of appraisal and provides “[i]f the chief appraiser uses the cost method of appraisal to determine the market value of real property, the chief appraiser shall: . . . (3) make available to the public on request the cost data developed and used by the chief appraiser as applied to all properties within a property category[.]” *Id.* § 23.011(3). In this instance, however, the district has not submitted any cost data for our review. As the submitted rendition statement does not represent cost data, we find this information is not subject to section 23.011(3). Therefore, we have no information to allow us to conclude any exception to confidentiality found in section 22.27(b) is applicable to the submitted information, and the district must withhold it pursuant to section 552.101 of the Government Code.³

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID#341296

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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