



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 19, 2009

Ms. Sandra Griffin
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Attorneys for Brazoria Central Appraisal District
3301 Northland Drive, Suite 505
Austin, Texas 78731

OR2009-06805

Dear Ms. Griffin:

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# 343730.

The Brazoria Central Appraisal District (the "district"), which you represent, received a request for twelve categories of information summarized as (1) specified affidavits and all information utilized during the requestor's client's appraisal review board hearing, (2) specified informal settlement documents and appraisal records related to property exemptions, (3) the appraisal supplement pertaining to the client's property, (4) all records and communications pertaining to the client's property, (5) 2008 appraisal records reflecting partial exemptions, (6) specified appraisal records for properties receiving partial exemptions for pollution control equipment, and (7) a copy of the contract between the district and a named third party consulting firm. You state the district will provide the information responsive to category one listed above to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.148 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor, in his request for information and comments submitted to this office, has specifically excluded from his request any property rendition statements or other information deemed confidential under section 22.27 of the Tax Code. Thus, any such information is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

As such, we need not address your argument under section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code.

Next, the requestor contends the district did not comply with the procedural requirements of the Act in requesting our decision. The requestor asserts the district failed to comply with sections 552.301(e)(1)(D) and 552.301(e)(2) of the Government Code, which state a governmental body must submit the requested information at issue, or a representative copy, and label the information to indicate which exceptions under the Act apply to which parts of the information. *Id.* § 552.301(e)(1)(D), (e)(2). Although the district has submitted information partially representative of categories 2 and 4 listed above, we find the district did not submit a truly representative sample of the requested information pertaining to categories 3, 5, 6, and 7 listed above. *See* Open Records Decision Nos. 499 (1988), 497 (1988). Consequently, we find the district failed to comply with the requirements of section 552.301(e) with respect to the information requested in categories 3, 5, 6, and 7.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301(e) results in the legal presumption the requested information at issue is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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 of the Government Code); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Because the district has failed to comply with the requirements of the Act with respect to categories 3, 5, 6, and 7, the district has waived its claim for that information under section 552.103, which is a discretionary exception to disclosure. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions). You also claim section 552.148, which is a mandatory exception to disclosure, for the information responsive to categories 3, 5, 6, and 7. However, because you have not submitted for our review the information responsive to categories 3, 5, 6, and 7, or representative samples, we have no basis for finding any of this information confidential by law. We, therefore, conclude the district must release the information responsive to categories 3, 5, 6, and 7 to the requestor pursuant to section 552.302. If you believe this information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

You assert the submitted information is excepted under section 552.103 of the Government Code, which provides:

(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). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable 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 information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, the district received the request for information after a lawsuit styled *Nabors Drilling USA LP v. Brazoria County Appraisal District*, No. 51188, was filed in the 412th Judicial District Court of Brazoria County, Texas. Based upon your representation and our review, we conclude litigation involving the district was pending when the district received the request. You explain the lawsuit is the requestor's client's only method of appealing the district appraisal review board's order regarding the assessment of taxes for the client's property. You state the submitted information is related to the pending litigation because the information helps form the basis of the lawsuit. Based on your representations and our review, we find the submitted information is related to the pending litigation for the purposes of section 552.103.

We note, however, once the information at issue has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any information at issue that has either been obtained from or provided to all opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. In this instance, you inform us the submitted information is from the requestor's client's own file. Furthermore, after reviewing the submitted information, it appears the requestor's client, who is the opposing party in the pending litigation, has seen or had access to all of the submitted information because the information was created by or

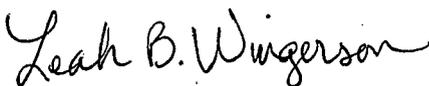
sent to the requestor's client. Therefore, none of the submitted information may be withheld under section 552.103 of the Government Code.

You claim section 552.148 of the Government Code applies to the submitted information. Section 552.148 provides in relevant part, "[i]nformation relating to real property sales prices, descriptions, characteristics, and other related information received from a private entity by the comptroller or the chief appraiser of an appraisal district under Chapter 6, Tax Code, is excepted from [required public disclosure]." Gov't Code § 552.148(a). Although you have correctly stated and summarized the language of section 552.148, you have not provided any arguments explaining how section 552.148 applies to any of the submitted information. Therefore, we find you have failed to demonstrate how section 552.148 applies to the submitted information, and none of the information may be withheld on this basis. As you have claimed no other exceptions to disclosure for the submitted information, it must be released.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 343730

Enc. Submitted documents

c: Requestor
(w/o enclosures)