



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2009

Mr. Tom L. Hanna
Thomas L. Hanna, P.C.
P.O. Box 1384
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OR2009-06818

Dear Mr. Hanna:

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# 341800.

The Jefferson County Appraisal District (the "district"), which you represent, received a request for appraisal records, supporting data, and service contracts pertaining to specified property. You state that a portion of the requested information has been released to the requestor. You claim that the remaining submitted information is excepted from disclosure under section 552.101 of the Government Code. You also explain that the submitted information may contain third parties' proprietary information subject to exception under the Act. Accordingly, you have notified Motiva Enterprises LLC ("Motiva"), Exxon Mobil Corporation ("ExxonMobil"), Total Petrochemicals USA, Inc. ("Total"), and Valero Energy Corp. ("Valero") of this request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code* § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exception you claim and reviewed the submitted information. We have also considered comments received from Motiva, ExxonMobil, and Total pursuant to section 552.305(d) 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 also considered comments received from the requestor. *See id.*

Initially, we note that the requestor seeks cost data developed and used by the district in its appraisal of real property pursuant to section 23.011(3) of the Tax Code. *See* Tax Code § 23.011(3). The district informs this office that the cost method of appraisal was used in appraising some real property that is the subject of the instant request. However, the district further informs this office that it has not submitted any cost data for our review. Therefore, to the extent this information existed on the date the district received the instant request, we assume it has been released to the requestor. If the district has not released all such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

We next note that the appraisals at issue were prepared for the district by Capitol Appraisal Group, Inc., an outside appraiser. Therefore, the requested 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.

Tax Code § 25.01(c). The effect of this provision is to make public the appraisal and "supporting data" which must be 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 the district seeks to withhold constitutes an appraisal or supporting data for the 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). You state that the responsive appraisals have been released to the requestor. You further inform this office that none of the information submitted for our review consists of supporting data for the purposes of section 25.01(c). Therefore, to the extent any information responsive to the instant request consists of supporting data under section 25.01(c) of the Tax Code, we assume it has been released to the requestor. If the district has not released all such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

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 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:

...

(2) to the person who filed the statement or report or the owner of property subject to the statement, report, or information or to a representative of either authorized in writing to receive the information;

Tax Code § 22.27(a), (b)(2). You state that the submitted information was obtained from property owners under a promise of confidentiality. However, we understand that the requestor in this instance is a representative of Valero. As such, the requestor has a statutory right of access to the responsive information pertaining to Valero that would otherwise be confidential under section 22.27. *See* Tax Code § 22.27(b)(2). Accordingly, all responsive information that Valero provided to the district in connection with the appraisal of its property must be released to the requestor. You assert that the remaining information consists of renditions and working papers summarizing these renditions provided to the district by Motiva, ExxonMobil, and Total. Thus, based on your representations and our review, we conclude that the remaining information is confidential under section 22.27(a) and must be withheld under section 552.101 of the Government Code. *See* Open Records Decision No. 387 (1983) (stating, among other things, that names and addresses of owners and ownership interest of each owner contained in division orders of wells and leases provided to appraisal district under a promise of confidentiality are confidential pursuant to section 22.27 of the Tax Code).

Finally, we address the requestor's assertion that he has a right of access to portions of the submitted information. Section 25.195(a) of the Tax Code provides that, except as provided by subsection (b), a property owner's designated agent has a right of access to information subject to section 22.27. We note that section 25.195(a) is limited by section 25.195(b),

which states that “[t]he owner of property other than vacant land or real property used for residential purposes or the owner’s agent may not inspect any material or information obtained under section 22.27.” Tax Code § 25.195(b). Section 25.195(b) prohibits an agent of a non-residential property owner from accessing information the district obtained under section 22.27. Here, the requestor’s client owns non-residential property, and the district informs this office that the information at issue was obtained under section 22.27. Thus, the requestor does not have a right of access to any of the submitted information under section 25.195(a).

In summary, the district must release all information it obtained from Valero in connection with the appraisal of Valero’s property pursuant to section 22.27(b)(2) of the Tax Code. The remaining submitted information must be withheld under section 552.101 in conjunction with section 22.27(a) of the Tax Code. As our ruling is dispositive with regard to the submitted information, we need not address the remaining arguments against its disclosure.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 341800

Enc. Submitted documents

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(w/o enclosures)

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