



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2011

Mr. James R. Evans, Jr.
Counsel for the Gonzales County Appraisal District
Hargrove & Evans, L. L. P.
4425 Mopac South
Building 3, Suite 400
Austin, Texas 78735

OR2011-11193

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# 425972.

The Gonzales Appraisal District (the "district"), which you represent, received a request for an electronic copy of shape files and digitized map data comprised of the most recent appraisal roll, the mapping layers that make up the public website, and the 'county road layer' as well as any contracts between Gonzales County and OGIInfo.¹ You state the district released most of the requested information. You claim submitted information is excepted from disclosure under sections 552.110 and 552.113 of the Government Code. You also assert the release of the submitted information may implicate the proprietary interests of OGIInfo. Accordingly, you notified OGIInfo of the request and of its opportunity to submit arguments to this office as to why its information should be excepted from public disclosure. See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of

¹You inform us the district sought and received clarification of the instant request from the requestor. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

information.² We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.113 of the Government Code provides in relevant part as follows:

(a) Information is excepted from the requirements of [required public disclosure] if it is:

...

(2) geological or geophysical information or data, including maps concerning wells, except information filed in connection with an application or proceeding before an agency[.]

Id. § 552.113(a)(2). In Open Records Decision No. 627 (1994), this office concluded section 552.113(a)(2) protects from public disclosure only (i) geological and geophysical information regarding the exploration or development of natural resources that is (ii) commercially valuable. ORD 627 at 3-4 (overruling rationale of Open Records Decision No. 504 (1988)). The decision explained the phrase “information regarding the exploration or development of natural resources” means “information indicating the presence or absence of natural resources in a particular location, as well as information indicating the extent of a particular deposit or accumulation.” *Id.* at 4 n.4. However, section 552.113(a)(2) does not except general geological information about a particular location that is unrelated to the “presence or absence of natural resources.” In order to be commercially valuable for purposes of Open Records Decision No. 627 and section 552.113, information must not be publicly available. Open Records Decision No. 669 (2000).

Upon review, we conclude the district has not demonstrated any of the information at issue is commercially valuable geological or geophysical information regarding the exploration of or development of natural resources. Accordingly, the district may not withhold any of the information at issue under section 552.113.

Next, you argue the information at issue is excepted under section 552.110 of the Government Code. However, section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the district's argument under section 552.110. We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter,

²We assume the “representative samples” of records submitted to this office are 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 to the extent those records contain substantially different types of information than that submitted to this office.

OGInfo has not submitted arguments to this office explaining why the information at issue should not be released. We thus have no basis to conclude release of the information at issue will harm OGInfo's proprietary interests. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, the district may not withhold any of the information at issue on the basis of any proprietary interest OGInfo may have in the information. As no other exceptions to disclosure are raised, the requested information 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, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 425972

Enc. Submitted documents

c: Requestor
(w/o enclosures)

OGInfo
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(w/o enclosures)