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ATTORNEY GENERAL OF TEXAS

July 7, 2015

Ms. E. Barry Gaines
Senior Legal Counsel
Harris County Appraisal District
P.O. Box 920975
Houston, Texas 77292-0975

OR2015-13665

Dear Ms. Gaines:

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# 570638 (HCAD Internal Ref. No. 15-1848).

The Harris County Appraisal District (the "district") received a request for (1) the real property appraisal reports in 2014 for five specified refineries, (2) the contracts for appraisal services in 2014 with two specified third parties, and (3) any e-mails between the district and one of the specified third parties pertaining to three specified account numbers and the valuation of one of the specified refineries during a specified tax year.¹ You state you have made some information available to the requestor. You state you do not have information responsive to a portion of the request.² You argue some of the submitted information is not

¹We note the district sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

²The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

subject to the Act. Additionally, you claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. You also state release of some of the submitted information may implicate the interests of Capital Appraisal Group (“Capital”). Accordingly, you notified Capital of the request for information and of its right to submit arguments stating why its information should not be released. *See* Gov’t Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received and considered comments from a representative of the requestor and interested third parties. *See* Gov’t Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted representative sample of information.³

The Act is applicable only to “public information.” *Id.* §§ 552.002, .021. Section 552.002(a) defines “public information” as

information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

³We assume 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 to the extent those records contain substantially different types of information than that submitted to this office.

Id. § 552.002(a). Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns the information or has a right of access to it. *Id.* § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987).

You represent portions of the submitted information consist of working papers of a private appraisal firm the district has contracted with, and therefore are not subject to the Act. Section 25.01 provides, in relevant part, as follows:

(c) 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). You state the district has contracted with a private appraisal firm to provide appraisal services on the accounts that are the subject of the instant request. We understand the information at issue consists of working papers maintained solely by the private appraisal firm. An outside appraisal firm is not required to provide this type of information to the district, and the district does not own this information or have a right of access to it. *See* Open Records Decision No. 550 at n. 2 (1990). Based on your representations and our review, we agree the working papers of the outside appraisal firm that are not maintained by the district are not public information subject to required public disclosure under the Act. *See* Gov't Code § 552.002(a). Therefore, the district is not required to release the information at issue in response to this request.⁴

Section 552.103 of the Government Code provides as follows:

(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

⁴As we are able to make this determination, we need not address the remaining arguments against disclosure of this information.

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, orig. proceeding); *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 contend the remaining information is related to pending litigation to which the district is a party. You inform us, and have provided documentation demonstrating, litigation styled *Valero Refining - Texas, L.P. v. Harris County Appraisal District*, Cause No. 2013-49459, was pending in the District Court of Harris County, 333rd Judicial District, on the date the district received the request. You explain some of the information at issue pertains to information sought by the plaintiffs through discovery. You further explain the remaining information at issue is related to the pending lawsuit because it pertains to the valuation of the plaintiffs' property, the circumstances of which are the issue of the pending litigation. Based on your representations, the submitted documentation, and our review of the submitted information, we find litigation was pending when the district received this request for information, and we find the remaining information is related to the pending litigation for purposes of section 552.103. Therefore, the district may withhold the remaining information under section 552.103 of the Government Code.⁵

We note, however, the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. *See* ORD 551 at 4-5. Thus, if the opposing party has seen or had access to information relating to the pending litigation through discovery or otherwise, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We also note the applicability of section 552.103 ends once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the working papers of the outside appraisal firm that are not maintained by the district are not subject to the Act and need not be released. The district may withhold the remaining information under section 552.103 of the Government Code.

⁵As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 570638

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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