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ATTORNEY GENERAL OF TEXAS

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OR2015-17843

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# 577261.

The Lavaca County Central Appraisal District (the "district"), which you represent, received two requests for information pertaining to a specified well.¹ You claim the requested information is excepted from disclosure under sections 552.101, 552.110, and 552.149 of the Government Code. You also state release of this information may implicate the proprietary interests of Pritchard & Abbott, Inc. ("Pritchard"). Accordingly, you state, and provide documentation showing, you notified Pritchard of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *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 received comments from a representative of Pritchard. We have considered the

¹We note the requestor asserts the district failed to comply with its procedural obligations under the Act. *See* Gov't Code § 552.301(b). However, because sections 552.101 and 552.149 of the Government Code and third party interests can provide compelling reasons to withhold information, we will address the applicability of these exceptions and the third party's arguments to the information at issue. *Id.* § 552.302.

submitted arguments and reviewed the submitted representative sample of information.² We have also received and considered comments from 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 contends the requested information was previously released to the public. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information that has been previously released. We are unable to determine whether the submitted information is the exact information that may have been previously released. Regardless, the district claims the information is excepted from disclosure pursuant to sections 552.101 and 552.149 of the Government Code, which make information confidential by law for purposes of section 552.007. *See* Gov't Code §§ 552.101, .149; *see also* Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). Therefore, we will consider the district's arguments for the information at issue. Furthermore, because section 552.110 of the Government Code, which protects a third party's interests, also makes information confidential for purposes of section 552.007, we will consider whether the information may be withheld based on the interests of Pritchard.

Section 25.01(c) of the Tax Code 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" that must be provided to the district. *See* Attorney General Opinion

²We 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 that those records contain substantially different types of information than that submitted to this office.

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, such as sections 552.110 and 552.149 of the Government Code, 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). You inform us the information at issue was provided to Pritchard, an outside appraiser that appraises mineral interests for the district. You state the submitted information does not constitute supporting data for the purposes of section 25.101(c). *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). However, the requestor asserts the submitted information constitutes supporting data for the purposes of section 25.01(c). The issue of whether the submitted information constitutes supporting data for the purposes of section 25.01(c) is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. As such, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Therefore, based on the district's representation, we determine the submitted information does not constitute supporting data for the purposes of section 25.01(c).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 22.27 of the Tax Code, which provides in pertinent part:

(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.

Tax Code § 22.27(a). You state the information you have marked was furnished to the district by the owners or agents of the owners of the properties at issue in connection with

the appraisal of the properties at issue. However, the requestor asserts the information at issue was not provided by the owners or agents of the owners. The issue of whether the submitted information was provided by the owners or agents of the owners of the properties at issue is a question of fact. As previously noted, this office is unable to resolve disputes of fact in the open records ruling process. As such, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* ORDs 592 at 2, 552 at 4, 435 at 4. Accordingly, we must rely upon the district's representation the information the district marked was provided by the owners or agents of the owners of the property at issue.

You state the information you have marked may not have been obtained under any promise of confidentiality. However, you argue the language of section 22.27(a) is written such that the requirement of a promise of confidentiality applies only to information voluntarily disclosed about sales prices. Therefore, you argue although the information you have marked may not have been disclosed under a promise of confidentiality, the information is nonetheless confidential under section 22.27(a) because it is information submitted by the property owner in connection with the appraisal of property and does not consist of voluntarily disclosed sales price information. After considering your arguments and reviewing the statutory language, we agree the promise of confidentiality requirement in section 22.27(a) pertains only to voluntarily disclosed sales price information. Accordingly, based on your arguments and our review of the requested information, we find the information you have marked is confidential under section 22.27(a) of the Tax Code and the district must withhold it under section 552.101 of the Government Code.³

Section 552.149 of the Government Code provides, in relevant part:

- (a) Information 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 the requirements of [the Act].

Gov't Code § 552.149(a). Subsections 552.149(a) and (b) are limited to those counties having a population of 50,000 or more. *Id.* § 552.149(e). We note Lavaca County has a population of less than 50,000.⁴ Accordingly, section 552.149 is not applicable to the remaining information and the district may not withhold any of it on that basis.

³As our ruling on this information is dispositive, we need not address the remaining arguments against its disclosure.

⁴The population of Lavaca County was 19,262 in 2010. U.S. Bureau of the Census, State and County Quick Facts, *available at* <http://quickfacts.census.gov/qfd/states/48/48285.html>.

Although the district argues that the remaining information is excepted under section 552.110 of the Government Code, that exception 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. Pritchard claims its information is excepted under section 552.110 of the Government Code, which protects (1) trade secrets, and (2) commercial or financial information, the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See id.* § 552.110(a), (b). Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *See Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* Open Records Decision No. 552 (1990). Section 757 provides that a trade secret is

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.⁵ RESTATEMENT OF TORTS § 757 cmt. b (1939). This office must accept a

⁵The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* ORD 552 at 5. However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. *See* Open Records Decision No. 402 (1983).

Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 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).

Upon review, we find Pritchard has failed to demonstrate that any of the remaining information meets the definition of a trade secret, nor has Pritchard demonstrated the necessary factors to establish a trade secret claim for this information. *See* Open Records Decision No. 319 at 3 (1982) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Thus, none of Pritchard’s remaining information may be withheld under section 552.110(a) of the Government Code.

Upon review of Pritchard’s arguments and the information at issue, we find Pritchard has failed to make the specific factual or evidentiary showing that release of the remaining information would result in substantial damage to its competitive position. Thus, Pritchard has not demonstrated that substantial competitive injury would result from the release of any of its remaining information. *See* Open Records Decision Nos. 661, 509 at 5 (1988) (because bid specifications and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative). Accordingly, none of the remaining information at issue may be withheld under section 552.110(b).

In summary, the district must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. The remaining 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.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,



Jennifer Luttrall
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Open Records Division

JL/akg

Ref: ID# 577261

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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