



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 23, 2015

Mr. James R. Evans, Jr.
Counsel for the Terrell County Appraisal District
Hargrove & Evans, LLP
4425 MoPac South, Building 3, Suite 400
Austin, Texas 78735

OR2015-24576

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# 586248.

The Terrell County Appraisal District (the "district"), which you represent, received a request for specified electronic data files pertaining to specific mineral accounts. We understand you will release some information. You claim the submitted 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 Pickett & Co., Inc. ("Pickett"). Accordingly, you state, and provide documentation showing, you notified Pickett 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 considered the submitted arguments and reviewed the submitted representative sample of information.¹

¹We 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.

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) of the Government Code 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, we have not received comments from Pickett explaining why the submitted information should not be released. Therefore, we have no basis to conclude Pickett has a protected proprietary interest in the submitted information. *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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the district may not withhold any of the submitted information on the basis of any proprietary interest Pickett may have in the information.

Next, you note the requestor states he prefers to receive copies of the requested information in electronic format. Section 552.228 of the Government Code requires a governmental body to provide a copy of the public information in the requested medium if it has the technological ability to do so without the purchase of software or hardware. *See* Gov't Code § 552.228(b)(1), (2). However, you state, "a requestor could manipulate the electronic mineral appraisal roll to list net revenue interests according to lease number, thereby enabling the requestor to build a division order that would otherwise be confidential." Therefore, you object to releasing the requested information in electronic format. We note, however, this office has determined the Act does not permit the consideration by a governmental body or this office of a requestor's intended use of information when responding to open records requests. *See id.* § 552.222(a) (stating governmental body may not inquire into purpose for which information will be used); *see also* Open Records Decision Nos. 508 at (1988) (motives of a person seeking information under the Act are irrelevant), 51 (1974). Additionally, a governmental body is not responsible for the use that may be made of information that it releases to the public. *See* Gov't Code § 552.204; ORD 508 at 3 (use that may be made of information does not control whether it falls within exception to disclosure). A governmental body must release the information to which a requestor seeks access unless the information falls within the scope of an exception to public disclosure under the Act. *See* Gov't Code § 552.221; Open Records Decision No. 664 (2000). Although you have not submitted the requested information to this office for review in an electronic format, we understand the district has the technological capability to provide the requested information to the requestor in electronic format. Accordingly, to the extent the submitted information is subject to release, the district must provide the submitted information to the requestor in electronic format. *See* Gov't Code § 552.228(c).

You state the submitted information was prepared for the district by Pickett, an outside appraiser. 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 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). However, you state the requested information comprises working papers and matters of privileged or proprietary nature, and does not constitute "supporting data" for the purposes of section 25.01(c). Accordingly, we will consider your arguments under sections 552.101, 552.110, and 552.149 of the Government Code.

The district asserts the submitted information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision and (2) commercial 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(a)-(b). However, section 552.110 protects only the interests of the third parties that have provided information to a governmental body, not those of the governmental body itself. Therefore, we do not address the district's argument under section 552.110.

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].

(b) Notwithstanding Subsection (a), the property owner or the owner's agent may, on request, obtain from the chief appraiser of the applicable appraisal district a copy of each item of information described by Section 41.461 (a)(2), Tax Code, and a copy of each item of information that the chief appraiser took into consideration but does not plan to introduce at the hearing on the protest. In addition, the property owner or agent may, on request, obtain from

the chief appraiser comparable sales data from a reasonable number of sales that is relevant to any matter to be determined by the appraisal review board at the hearing on the property owner's protest[.]

Id. § 552.149(a)-(b). 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 Terrell County has a population of less than 50,000.² Accordingly, section 552.149 is not applicable to the submitted information and the district may not withhold any of it on that basis.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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.

(b) Information made confidential by this section may be disclosed:

...

(6) 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[.]

Tax Code § 22.27(a), (b)(6). You indicate the district is an “appraisal office” for purposes of section 22.27(a). You state the information the district seeks to withhold consists of the

²The population of Terrell County was 984 in 2010 and was estimated to be 927 in 2014. U.S. Bureau of the Census, State and County Quick Facts, *available at* <http://quickfacts.census.gov/qfd/states/48/48443.html>.

same information furnished to Pickett by property owners under a promise of confidentiality and contained in division orders. However, in response to a request for additional information this office sent pursuant to section 552.303 of the Government Code, you inform us the information you have marked is required to be included in public appraisal rolls pursuant to section 9.3004 of title 34 of the Texas Administrative Code.³ See 34 T.A.C. § 9.3004(b)(1)-(3) (appraisal records shall contain the name and address of the owner, the legal description of the real property, and the separately taxable estates or interests in real property). Thus, we find the information you have marked is subject to section 22.27(b)(6) of the Tax Code and is not confidential pursuant to section 22.27(a). See Open Records Decision No. 347 at 6 (1982) (subsection 22.27(b)(6) expressly permits disclosure of information which, while confidential in rendition statement, is also required to be in public appraisal roll). Accordingly, the district may not 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. As you raise no further exceptions to disclosure, the submitted 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,



Rahat Huq
Assistant Attorney General
Open Records Division

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³See Gov't Code § 552.303(e)-(d) (if attorney general determines information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice).

Ref: ID# 586248

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Stephen Campbell
Thos. T. Pickett & Co., Inc.
4464 Sigma Road
Dallas, Texas 75244-4501
(w/o enclosures)