



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 6, 2016

Mr. Daniel C. McDonnell
Counsel for the Galveston Central Appraisal District
Greer, Herz & Adams, LLP
2525 South Shore Boulevard, Suite 203
League City, Texas 77573

OR2016-27004

Dear Mr. McDonnell:

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# 636495.

The Galveston Central Appraisal District (the "district"), which you represent, received a request for nine categories of information pertaining to the appraisals of four properties. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.104, 552.110, and 552.149 of the Government Code. You also state you notified Blanchard Refining Company, LLC; Capitol Appraisal Group, LLC ("Capitol"); Marathon Petroleum Company, LP ("Marathon"); and Valero Refining - Texas LP of the 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); *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 Marathon. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note Marathon objects to disclosure of information the district has not submitted to this office for review. This ruling does not address information that was not submitted by

the district and is limited to the information the district has submitted for our review. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Next, we note the submitted information may consist of supporting data for purposes of section 25.01(c) of the Tax Code. Section 25.01(c) 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 552.103, 552.104, 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). Additionally, section 22.27(b)(6) of the Tax Code provides information made confidential by section 22.27 may be disclosed if and to the extent the information is required to be included in a public document of record that the appraisal office is required to maintain. *See* Tax Code § 22.27(b)(6). Marathon informs us, and the submitted information indicates, the district contracted with Capitol to produce appraisal reports for one of the specified properties. We note the submitted information indicates the district also contracted with Capitol for the appraisals of the other specified properties. However, you do not inform us as to whether the information at issue constitutes supporting data for the purposes of section 25.01(c). Therefore, to the extent the information constitutes supporting data for the purposes of section 25.01(c), such information is a public record which must be released to the requestor. To the extent the information at issue does not constitute supporting data for the purposes of section 25.01(c), we will consider the submitted arguments against disclosure.

Section 552.110 of the Government Code 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* Gov't Code § 552.110(a)-(b). Although the district argues the submitted information is excepted under section 552.110, 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. 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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have only received comments from Marathon explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties has protected proprietary interests 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, that release of requested information would cause party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the district may not withhold the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

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. Section 22.27(a) of the Tax Code provides the following:

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). We understand the district is an “appraisal office” for purposes of section 22.27(a). Marathon states some of its information was furnished to the district in connection with the appraisal of Marathon’s property. None of the exceptions in section 22.27(b) apply in this instance. *See id.* § 22.27(b). Based on these representations and our review, we find the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code.¹ However, we find the district has failed to demonstrate the remaining information falls within the scope of section 22.27(a). Accordingly, the district may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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 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).

The district states lawsuits styled *Valero Refining — Texas, L.P. v. Galveston Central Appraisal District*, Cause No. 14-CV-0955, and *Valero Refining — Texas, L.P. v. Galveston Central Appraisal District*, Cause No. 15-CV-0918, were pending against the district in the 56th Judicial District Court and 212th Judicial District Court of Bexar County, Texas, respectively, when it received the instant request for information. You state the information you have indicated is related to the pending lawsuits. Based on your representations and our review of the submitted information, we find litigation was pending when the district received this request for information, and the information at issue is related to the pending litigation for the purposes of section 552.103. Therefore, the district may withhold the information you have indicated under section 552.103(a) of the Government Code.²

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

has either been obtained from or provided to the opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You state release of the remaining information may be harmful to the specified properties’ owners. However, while you argue release of the submitted information would harm the specified properties’ owners by giving an advantage to their competitors, such an interest in protecting the information belongs to the property owners and not the district. Upon review, we find the district may not withhold any of the remaining information under section 552.104(a) of the Government Code.

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[.]

Gov’t Code § 552.149(a)-(b). Sections 552.149(a) and (b) are limited to those counties having a population of 50,000 or more. *Id.* § 552.149(e). We understand Galveston County has a population of 50,000 or more. You generally assert section 552.149 for the remaining information. Upon review, however, we find you have failed to demonstrate the remaining information consists of information related to real property sales, descriptions, and characteristics that was obtained from a private entity. Therefore, the district may not withhold any of the remaining information under section 552.149(a) of the Government Code.

In summary, to the extent the submitted information constitutes supporting data for the purposes of section 25.01(c) of the Tax Code, such information is a public record which must be released to the requestor. To the extent the submitted information does not constitute supporting data for purposes of section 25.01(c) of the Tax Code, the district 1) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code, 2) may withhold the information you have indicated under section 552.103(a) of the Government Code, and 3) must release the remaining 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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/bw

Ref: ID# 636495

Enc. Submitted documents

c: Requestor
(w/o enclosures)

REF ID # 636495

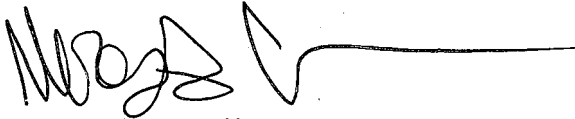
DAVID HUGIN
RAMIREZ HUGIN PLLC
PO BOX 43127
AUSTIN TX 78704

In summary, to the extent the submitted information constitutes supporting data for the purposes of section 25.01(c) of the Tax Code, such information is a public record which must be released to the requestor. To the extent the submitted information does not constitute supporting data for purposes of section 25.01(c) of the Tax Code, the district 1) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code, 2) may withhold the information you have indicated under section 552.103(a) of the Government Code, and 3) must release the remaining 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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/bw

Ref: ID# 636495

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)