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ATTORNEY GENERAL OF TEXAS

April 16, 2020

Mr. Kyle Dickson  
Attorney for the Howard County Appraisal District  
Perdue Brandon Fielder Collins & Mott, LLP  
3301 Northland Drive, Suite 505  
Austin, Texas 78731

OR2020-11105

Dear Mr. Dickson:

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# 822765.

The Howard County Appraisal District (the "district"), which you represent, received a request for nine categories of information related to a specified property. You state the district has released some information. You claim a portion of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. You state release of some of the submitted information may implicate the proprietary interests of Alon USA LP and Alon USA Partners LP (collectively "Alon"). Accordingly, you state, and provide documentation showing, you notified Alon of the request for information and of its right to submit arguments to this office as to why the information at issue 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 Alon. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

The Act is applicable only to "public information." Gov't Code §§ 552.002, .021. Section 552.002(a) defines "public information" as

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<sup>1</sup> We 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.

[I]nformation 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.

*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 Exhibit C consists of working papers of a private appraisal firm the district has contracted with, and therefore is not subject to the Act. Section 25.01 of the Tax Code 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. You state Exhibit C 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 Exhibit C in response to this request.<sup>2</sup>

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 of the Tax Code provides, in part, the following:

(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 district is an “appraisal office” for purposes of section 22.27(a). You state Exhibit B consists of rendition statements provided to the district by the property owners pursuant to section 22.27(a). Further, you state none of the exceptions in section 22.27(b) apply in this instance. *See id.* § 22.27(b)(2). Based on your representations and our review, we find the district must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code.

Section 552.107(2) of the Government Code provides information is excepted from disclosure if “a court by order has prohibited disclosure of the information.” Gov't Code § 552.107(2). You have submitted a copy of a Confidentiality and Protective Order (the “protective order”) signed on March 4, 2019, by a judge in the 118th Judicial District Court of Howard County, Texas. The protective order encompasses certain information that is designated “confidential information” by certain persons. You explain the remaining information is subject to the protective order. Based upon your representations and our review, we agree a court by order has prohibited disclosure of the information at issue. Accordingly, the district must withhold the remaining information under section 552.107(2) of the Government Code.<sup>3</sup>

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<sup>2</sup>As we are able to make this determination, we need not address the remaining arguments against disclosure of this information.

<sup>3</sup> As our ruling is dispositive, we need not address Alon's arguments against disclosure of this information.

In summary, Exhibit C is not subject to the Act and the district is not required to release Exhibit C in response to this request. The district must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code. The district must withhold the remaining information under section 552.107(2) of the Government Code.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Kelly McWethy  
Assistant Attorney General  
Open Records Division

KM/gw

Ref: ID# 822765

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Parties  
(w/o enclosures)