Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 7, 1997

Mr. Sands L. Stiefer
Chief Deputy
Harris County Appraisal District
P.O. Box 920975
Houston, Texas 77292-0975

OR97-0480

Dear Mr. Stiefer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103465.

The Harris County Appraisal District (the "district") received a request for various documents pertaining to the appraisals of several properties within the district. Specifically the requestor seeks:

1. The appraisals prepared by either the Appraisal District or its appraisal firm on the Properties.

2. The supporting data used by either the Appraisal District or its appraisal firm in preparing the appraisals.

3. All appraisal and assessment related information prepared by either the Appraisal District or its appraisal firm, including source documents, supporting data, workpapers[,] engineering drawings, flow charts and inventory detail sheets.

4. Documents containing the numbers and calculations the Appraisal District or its appraisal firm used to reach the appraised values, as well as other data that justifies the appraisals.

You inform us that the appraisals of three of the requested properties were conducted by outside contractors. *See* Tax Code § 25.01(b). Two of the properties, Crown Central Petroleum Corporation Refinery ("Crown Central") and Lyondell Petrochemical Company Refinery ("Lyondell"), were appraised by the district. You state

that the district has released the 1995 appraisal roll entries to the requestor's client. You also state that the district will provide the requestor with the summary appraisal performed by the contractor for the Philbro Refining Company Refinery ("Philbro") and an edited form of the appraisal summary for the Exxon Company, USA Refinery ("Exxon"). With regard to the information responsive to items 3 and 4 for Philbro, Exxon, and Shell Oil Company Refinery ("Shell"), you state that because the appraisals were actually conducted by outside contractors, and not by the district, the records coming within the ambit of items 3 and 4 for those properties were never possessed by the district, but rather these records were held exclusively by outside contractors. You also claim that the information responsive to items 3 and 4 with regard to these properties is excepted from disclosure by section 22.27 of the Tax Code, as applied through section 552.101 of the Government Code, and section 552.110 of the Government Code. You claim that the requested information with regard to the Crown Central and Lyondell properties is excepted from disclosure under sections 552.204, 552.104, and 552.110 of the Government Code and section 22.27 of the Tax Code, as applied through section 552.101 of the Government Code.

We first address the properties that were appraised by outside contractors. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 25.01(c) of the Tax Code provides:

> 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.* [Emphasis added.]

We believe that the above emphasized language describes the types of information sought in items 3 and 4 of the open records request; *i.e.*, "source documents, . . . workpapers[,] engineering drawings, flow charts and inventory detail sheets" and "documents containing the numbers and calculations the Appraisal District or its appraisal firm used to reach the appraised values" outside of the inventory detail sheets. An outside appraisal firm is not required to provide these types of information to the district. Open Records Decision No. 550 (1990) at n.2; *see* Tax Code § 22.27(a). We therefore conclude that the district is not required to obtain these materials from the outside contractors to comply with these requests.[1]

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[1]As we are able to resolve the requests for information regarding these properties under section 552.101 of the Government Code, we do not address the arguments made under sections 552.104 and 552.110.

Section 22.27(a) of the Tax Code provides:

> Rendition statements, real and personal property reports, and 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.

Section 22.27 applies to four basic types of information: rendition statements, real and personal property reports, income and expense information related to property, and information about real or personal property sales prices when such information is voluntarily disclosed to an appraisal office after a promise that the information will be kept confidential. We agree that the following information related to Exxon must be withheld under this statute: 4.2. We agree that the following information related to Shell must be withheld under this statute: 3.1, 3.3, and 3.4. We further agree that the following information for Crown Central must be withheld under section 22.27: 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.8, 2.9, and 2.10. Finally, we agree that the following information for Lyondell must be withheld under this statute: 1.1, 1.2, 1.3, 1.4, and 1.7.[2]

We now address the remaining information related to Lyondell and Shell. You state that some of the information related to these companies may be proprietary. Therefore, pursuant to section 552.305 of the Government Code, this office informed Lyondell and Shell of the request and of their obligation to submit to this office their

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[2] We note that subsection (b) of section 22.27 contains the following exception for information made confidential under subsection (a):

> (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.

Under subsection (b), if the information at issue is "required to be included in a public document or record that the appraisal office is required to prepare or maintain," such information is not subject to the confidentiality of section 22.27(a). *See* Open Records Decision No. 347 (1982) at 3. We assume for purposes of this ruling that the submitted information is not required to be included in the appraisal records or other public records that the appraisal office is required to prepare or maintain. *See* Tax Code §§ 25.01(c), 25.02; 34 T.A.C. § 9.3004(b).

arguments as why any claimed exceptions to disclosure apply to their information. Shell states that the information requested includes only "supporting data" used by the appraisal district and that Shell's interpretation of "supporting data is data prepared by the Appraisal District in the normal course of their business." Shell also claims that "since a large part of this data is not available to the public at large [Shell] believe[s] that this constitutes a violation of public trust plus a competitive disadvantage if this data is forwarded to a competing company." Lyondell claims that some of its requested information is excepted from disclosure under section 552.110 of the Government Code. The only Lyondell information which the appraisal district did not claim was excepted from disclosure under section 22.27 of the Tax Code consists of various lists of equipment for new construction. The only Shell information that the appraisal district did not claim was excepted from disclosure under the Tax Code is product code assignments.

Section 552.110 excepts from disclosure a trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. In Open Records Decision No. 639 (1996), this office established that it would follow the federal courts' interpretation of exemption 4 to the federal Freedom of Information Act in applying the second prong of section 552.110. In *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), the court concluded that for information to be excepted under exemption 4 to the Freedom of Information Act, disclosure of the requested information must be likely either to (1) impair the Government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). "To prove substantial competitive harm, the party seeking to prevent disclosure must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure." *Sharyland Water Supply Corp. v. Block*, 755 F.2d 397, 399 (5th Cir.), *cert. denied*, 471 U.S. 1137 (1985) (footnotes omitted).

After reviewing the arguments of the parties, we conclude that Lyondell has established that its equipment lists, submitted as document 1.5, are excepted from disclosure under the second prong of section 552.110. Consequently, the appraisal district must withhold from disclosure the information submitted as 1.5. Shell has made no argument under any recognized exception to disclosure. Therefore, the appraisal district may not withhold from disclosure the information submitted as 3.5.

One final document must be addressed. A document submitted as 1.6 has been submitted, with the notation "Would not be available in discovery; contains policy advice." We assume that the appraisal district intends to claim that this information is excepted from disclosure under section 552.111 of the Government Code. However, this exception was not claimed within ten days of the appraisal district's receiving the request for information. *See* Gov't Code § 552.301(a). As section 552.111 is designed to protect a governmental body's interest, we conclude that the appraisal district has waived its

section 552.111 exception and that the document may not be withheld from required public disclosure. *See id.* 552.302.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

Stacy E. Sallee

Stacy E. Sallee
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Open Records Division

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Ref.: ID# 103465

Enclosures: Submitted documents

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