



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 11, 2009

Mr. Joseph T. Longoria  
Perdue, Brandon, Fielder, Collins & Mott, L.L.P.  
1235 North Loop West, Suite 600  
Houston, Texas 77008

OR2009-06323

Dear Mr. Longoria:

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# 340982.

The Hutchinson County Appraisal District (the "district"), which you represent, received a request for six categories of information pertaining to the appraisal of specified property occurring in the years 2006, 2007, and 2008. You state some of the requested information will be released to the requestor. You claim that the remaining information is excepted from disclosure under sections 552.101 and 552.148 of the Government Code.<sup>1</sup> You also state, and provide documentation showing, that you notified Pritchard & Abbott, Inc. ("P&A") of the district's receipt of the request for information and of P&A's right to submit arguments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 P&A. We have also received comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that an interested party may submit

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<sup>1</sup>Although the district also claims that the requested information is excepted from disclosure under section 552.305, we note that section 552.305 is not an exception to disclosure; instead, it permits a governmental body to decline to release information for the purpose of requesting an attorney general decision if it believes that a person's privacy or property interests may be involved. *See* Gov't Code § 552.305(a); Open Records Decision No. 542 at 1-3 (1990) (discussing statutory predecessor).

comments stating why information should or should not be released). We have considered the submitted arguments.

Initially, we address the district's contention that it has released the responsive appraisals and supporting data to the requestor. 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). This provision makes public the appraisal and supporting data used by a private appraisal firm to complete an appraisal for an appraisal 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). The district informs this office that P&A is a private appraisal firm that conducts appraisals for the district including the appraisals at issue. Additionally, we note that pursuant to the district's contract with P&A, P&A is required to provide copies of all appraisals, together with supporting data to the district. In your April 27, 2009 letter to this office, you state that the responsive information which constitutes appraisals or supporting data has been released to the requestor. However, the requestor represents that the district has only released the district's contract with P&A and copies of the appraisal cards for the subject property, and that he has not received anything that constitutes an appraisal or supporting data from the district. Whether the responsive appraisals and supporting data have been released to the requestor in this instance is a question of fact. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* Open Records Decision No. 552 at 4 (1990). Accordingly, we must accept the district's representation that the responsive appraisals and supporting data that must be provided to the district by its private appraisal firm have been released.

We now turn to the district's procedural obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or

representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). The district received the instant request on February 3, 2009. You state that the district defers to P&A to provide copies of representative samples of the information at issue to this office. However, we note that the Act requires the governmental body seeking the attorney general's opinion to submit copies or representative samples of the specific information requested. *See* Gov't Code § 552.301(e)(1)(D). On April 3, 16, 21, 24, and 27, this office informed the district that, in order for this office to rule on the public availability of the responsive information, any information the district seeks to withhold must be submitted to this office by the district. *See id.* Although P&A has submitted some information, as of the date of this ruling the district has failed to submit any information responsive to the instant request. Because the district has not submitted a copy or representative samples of the information it seeks to withhold as required under section 552.301(e), we find that the district failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Although sections 552.101 and 552.148 of the Government Code can provide compelling reasons for nondisclosure of information and third party interests are at stake, we have no basis for concluding that the requested information is excepted under these sections because you failed to submit any portion of it to us for our review. Further, because the information submitted by P&A was not submitted by the district, this ruling does not address its public availability under the Act. *See* Gov't Code § 552.301(e)(1)(D). Thus, in accordance with section 552.302 of the Government Code, we have no choice but to order the district to release all information responsive to the instant request for information that has not previously been released to the requestor. If you believe this information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

Ref: ID# 340982

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

cc: Pritchard & Abbott, Inc.  
c/o Mr. Chris W. Stenholm  
Stenholm & Douglas, P.C.  
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Fort Worth, Texas 76102