



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2010

Mr. Kirk Swinney
McCreary, Veselka, Bragg & Allen, P.C.
700 Jeffrey Way, Suite 100
Round Rock, Texas 78664-2425

OR2010-10814

Dear Mr. Swinney:

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# 387208.

The Harrison Central Appraisal District (the "district"), which you represent, received a request for documents exchanged between the district and two named companies pertaining to a specified property during a specified time period and all other documents that pertain to the same property during the same time period. You state the district has released some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. You state that you have notified Trinity Tank Car, Inc. and Trinity Industries, Inc, and attorneys who have represented these companies, of the request and of their opportunity to submit comments to this office as to why the submitted information should not be released to the requestor. *See Gov't Code § 552.305(d); see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. The district received the request for information on April 29, 2010, but we did not receive your request for a decision from this office until May 17, 2010. *See* Gov't Code § 552.301(b). We note that the envelope in which you sent your request for a decision is not postmarked. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). You have also not otherwise provided sufficient evidence to establish that the district sent the request for a ruling to this office by May 13; therefore, we conclude that the district failed to establish that it complied with the procedural requirements mandated by 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* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.101 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will address your argument under this section.

We note that 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 requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, none of the third parties have submitted comments to this office explaining why any portion of their submitted information should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the submitted information relating to these third parties would implicate their proprietary interests. *See id.* § 552.110; Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm). Accordingly, we conclude that the district may not withhold any portion of these third parties' information on the basis of any proprietary interests that they may have in the information.

We now turn to the district's argument. 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 that other statutes make confidential. You raise section 552.101 in conjunction with section 22.27 of the Tax Code, which provides in 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.

Tax Code § 22.27(a) (emphasis added). You state the submitted information is a confidential rendition statement that was furnished to the district in connection with the appraisal of property and under a promise of confidentiality. We note, however, the submitted information includes information submitted to the district for the purpose of receiving a tax exemption. We note that an applicant for a tax exemption must generally furnish the information necessary to determine the validity of an exemption claim. *See id.* § 11.43(f). Having considered your arguments, we find that you have not demonstrated that the information submitted to the district in connection with the application for a tax exemption falls within the scope of section 22.27(a) of the Tax Code. We also note the submitted information includes a letter from the district to a company concerning the tax abatement application process. We also find this information does not fall within the scope of section 22.27(a). Therefore, we conclude the district may not withhold any of the submitted information pertaining to a tax abatement under section 552.101 in conjunction with section 22.27(a). The district, however, must withhold the rendition information under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code.

We note that the tax abatement application contains information that is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 11.48 of the Tax Code, which provides, in pertinent part:

(a) A driver’s license number, personal identification certificate number, or social security account number provided in an application for an exemption filed with a chief appraiser is confidential and not open to public inspection.

The information may not be disclosed to anyone other than an employee of the appraisal office who appraises property, except as authorized by Subsection (b).

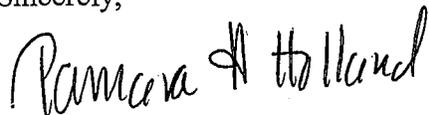
Id. § 11.48(a). The submitted tax abatement application contains a partial driver's license number, personal identification certificate number, or social security number. You do not indicate, nor does it appear to this office, that any of the release provisions of section 11.48(b) apply in this instance. *See id.* § 11.48(b) (listing five exceptions to confidentiality provision of section 11.48(a)). Thus, the partial driver's license number, personal identification certificate number, or social security number provided in the submitted exemption form, which we have marked, is excepted from disclosure under section 552.101 in conjunction with 11.48(a) of the Tax Code.

In summary, the submitted rendition information that was furnished to the district in connection with the appraisal of property and under a promise of confidentiality must be withheld under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. The district must withhold the partial driver's license number, personal identification certificate number, or social security number provided in the submitted exemption form, which we have marked, under section 552.101 in conjunction with 11.48(a) of the Tax Code. As no further exceptions to disclosure are raised, the remaining tax abatement 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.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, toll free at (888) 672-6787.

Sincerely,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/dls

Ref: ID# 387208

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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