



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2011

Mr. Christopher S. Jackson
Perdue, Brandon, Fielder, Collins & Mott, L.L.P.
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OR2011-14910

Dear Mr. Jackson:

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# 432952.

The Tarrant Appraisal District (the "district"), which you represent, received a request for appraisal reports prepared by a named individual or a named appraisal firm during a specified period of time. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence and rule 192.3 of the Texas Rules of Civil Procedure. You also state you have notified three interested third parties of the request for information and of their rights to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have also received comments submitted by the requestor. *Id.* We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Initially, the requestor claims that Exhibits B1 through B4 are made public by section 25.01(c) of the Tax Code. Section 25.01(c) of the Tax Code provides as follows:

¹We 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 those submitted to this office.

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 were 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 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). Therefore, to the extent the appraisal reports in Exhibits B1 through B4, which the district seeks to withhold, constitute appraisals or 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 appraisal reports in Exhibits B1 through B4 do not constitute appraisals or supporting data for the purposes of 25.01(c), we will address your arguments against their disclosure.

Next, you acknowledge, and we agree, Exhibits B1 through B4 are completed appraisal reports subject to section 552.022(a)(1) of the Government Code. This section provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is expressly confidential under "other law" or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). The Texas Supreme Court has held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, S.W.3d 328, 336 (Tex. 2001). Therefore, we will consider your arguments under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.3 for Exhibits B1 through B4.

Rule 503(b)(1) of the Texas Rules of Evidence provides:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

- (A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;
- (B) between the lawyer and the lawyer's representative;
- (C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a

lawyer representing another party in a pending action and concerning a matter of common interest therein;

(D) between representatives of the client or between the client and a representative of the client; or

(E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503(b)(1). A communication is “confidential” if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. TEX. R. EVID. 503(a)(5).

Accordingly, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must (1) show the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the document containing privileged information is confidential under rule 503 provided the client has not waived the privilege or the document does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ). You state Exhibits B1 through B4 are communications made in furtherance of professional legal services to the district between the district, the district’s legal counsel, and the district’s consulting expert hired by the district’s legal counsel. Furthermore, you state these communications were intended to be and have remained confidential. Therefore, the district may withhold Exhibits B1 through B4 under Texas Rule of Evidence 503.²

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. You contend Exhibit B5 is confidential under section 22.27 of the Tax Code. This section states in pertinent 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

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

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). Section 22.27(b)(4) of the Tax Code further provides that information made confidential by section 22.27 may be disclosed “in a judicial or administrative proceeding relating to property taxation to which the person who filed the statement or report or the owner of the property that is a subject of the statement, report, or information is a party.” *Id.* § 22.27(b)(4). You state Exhibit B5 was provided by a private property owner to the district’s review board as evidence in the owner’s market value protest. Thus, we understand you to state that the property owner provided the information in question to the district in connection with an appraisal of property. *See id.* §§ 41.41 (property owner may protest certain property evaluations before appraisal review board), .45. You do not inform us, however, whether or to what extent Exhibit B5 was disclosed to the district after a promise that the information would be held confidential. Nevertheless, we conclude that to the extent that the property owner voluntarily disclosed Exhibit B5 to the district after a promise of confidentiality, this information is confidential under section 22.27(a) of the Tax Code and must be withheld from disclosure under section 552.101 of the Government Code. To the extent that Exhibit B5 was not disclosed to the district by the property owner after a promise of confidentiality, Exhibit B5 is not confidential under section 22.27(a) and may not be withheld under section 552.101.

In summary, to the extent the appraisal reports in Exhibits B1 through B4 constitute appraisals or supporting data for the purposes of section 25.01(c), such information must be released to the requestor. Otherwise, the district may withhold Exhibits B1 through B4 under Texas Rule of Evidence 503. To the extent that the property owner voluntarily disclosed Exhibit B5 to the district after a promise of confidentiality, this information is confidential under section 22.27(a) of the Tax Code and must be withheld from disclosure under section 552.101 of the Government Code. To the extent that Exhibit B5 was not disclosed to the district by the property owner after a promise of confidentiality, Exhibit B5 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,



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Assistant Attorney General
Open Records Division

SEC/ag

Ref: ID# 432952

Enc. Submitted documents

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