



July 24, 2001

Mr. Gary Shaver
Boon, Shaver, Echols & Coleman, P.L.L.C.
P.O. Box 151040
Longview, Texas 75615-1040

OR2001-3204

Dear Mr. Shaver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149775.

The Gregg County Appraisal District (the "district"), which you represent, received two requests for information related to the valuation of the Pine Hill Landfill in Gregg County, Texas. You inform us that in response to these requests, the district "promptly released all of the information in its physical possession at that time to" the requestors. You inform us that subsequently, the district received a letter from the representative of Allied Waste Industries ("Allied") and Four S Oil Company, the lessee and owner of the property respectively, claiming that the records furnished to the district by these entities are confidential pursuant to section 22.27 of the Tax Code. After notification by the district, the representative of Allied submitted comments to this office arguing that the requested information is excepted under section 22.27 of the Tax Code, as well as under section 552.110 of the Government Code. *See Gov't Code § 552.305.* The district also argues that the requested information is excepted under section 552.110. We have considered the exception you claim as well as the arguments submitted by Allied, and have reviewed the submitted information.

First, we note that section 552.021 of the Government Code provides for public access to "public information." Section 552.002 of the Government Code defines public information for purposes of the Public Information Act (the "Act") as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." On the date of the request, the department indicates that it did not possess the information at issue. Ordinarily, a governmental body is not required to obtain information not in its possession. *See Open Records Decision No. 518 (1990).* However, information in the possession of another entity

may nevertheless be subject to the Act if the entity holds the information for the governmental body or if the governmental body owns the information or has a right of access to the information. In this case, the information at issue is maintained by Pritchard and Abbott, Inc., which conducted the appraisal of the Pine Hill landfill. 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.

The information at issue, in our opinion, consists of the working papers of Pritchard and Abbott, Inc.¹ An outside appraisal firm is not required to provide this type of information to the district. Open Records Decision No. 550 (1990) at n.2. We therefore conclude that, as the district neither possessed the information at issue nor had a right of access to it on the date of the request, the information is not "public information" subject to required public disclosure under the Act. *See* Gov't Code § 552.002(a). Consequently, we need not consider the arguments against disclosure of this information submitted by the district and by Allied.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

¹In this regard, we note that in the district's memoranda to the requestors dated May 3, 2001, the district's Chief Appraiser states that he has "requested (Pritchard and Abbott's) work papers . . . be forwarded to me as soon as they can be made available. . . ."

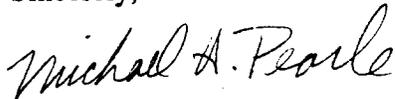
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 149775

Encl. Submitted documents

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