



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 3, 2009

Ms. Karen Alexander  
Associate Attorney  
Texas Midstream Gas Services  
100 Energy Way  
Fort Worth, Texas 76102

OR2009-04395

Dear Ms. Alexander:

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# 339305.

Texas Midstream Gas Services, L.L.C. ("TMGS"), received a request for eight categories of information related to the taking by eminent domain of a specific property. You claim that the submitted information is not subject to the Act. We have considered your arguments.

Section 552.0037 of the Government Code addresses the applicability of the Act when an entity that is not a governmental body possesses eminent domain powers:

Notwithstanding any other law, information collected, assembled, or maintained by an entity that is not a governmental body but is authorized by law to take private property through the use of eminent domain is subject to this chapter in the same manner as information collected, assembled, or maintained by a governmental body, but only if the information is related to the taking of private property by the entity through the use of eminent domain.

Gov't Code § 552.0037. Thus, under section 552.0037, information related to the taking of private property through the use of eminent domain by an entity that is not a governmental body is generally subject to the Act. *See* Attorney General Opinion GA-0517 at 3 (2007).

You acknowledge that TMGS, a non-governmental body, is authorized by law to take private property through the use of eminent domain and that the information at issue relates to the taking of private property through the use of eminent domain. *See* Util. Code § 181.004. However, you claim TMGS is exempted from the requirements of section 552.0037 by section 21.024(i) of the Property Code.

Section 21.024(i) provides that “[s]ection 552.0037 . . . does not apply in relation to those entities described in Subsection (a).” Prop. Code § 21.024(i). Subsection (a) states, in relevant part, that “[a] utility, a common carrier, or a transporter of oil, gas, or the products of oil or gas is considered to be within the definition of critical infrastructure under Section 421.001, Government Code.” *Id.* § 21.024(a); *see* Gov’t Code § 421.001 (“‘Critical infrastructure’ includes all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation.”); Util. Code § 121.001 (defining “gas utility”). Thus, under section 21.024(i), the entities to which section 552.0037 does not apply are a utility, a common carrier, and a transporter of oil, gas, or the products of oil or gas. *See* Prop. Code § 21.024(a), (i).

You state that TMGS is a natural gas utility that transports natural gas by pipeline. You also state that the Railroad Commission of Texas recognizes TMGS as a gas utility and issues permits to TMGS for it to operate its pipeline in Texas. In addition, you assert that TMGS qualifies as a “gas utility” under section 121.001 of the Utility Code, because it owns, operates, and maintains a pipeline for transporting natural gas. Section 121.001 states that, for the purposes of chapter 121, which concerns the regulation of gas pipelines, “gas utility” means a person who owns, manages, operates, leases, or controls in this state property or equipment or a pipeline, facility, franchise, license, or permit for a business that, among other things, owns, operates, or manages a pipeline that is for transporting or carrying natural gas, whether for public hire or not, and for which the right-of-way has been or is hereafter acquired by exercising the right of eminent domain. *See* Util. Code § 121.001(a)(2); *see also id.* § 121.001(b) (defining “person” for purposes of Subchapter A of Chapter 121). Accordingly, based on your representations, we find that, pursuant to section 21.024(i) of the Property Code, section 552.0037 of the Government Code does not apply to TMGS. We thus conclude that the Act does not require TMGS to release the requested information.<sup>1</sup>

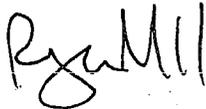
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>1</sup>We note that, pursuant to section 21.024(a) of the Property Code, in certain situations, a person who owns property that is the subject of proposed or existing eminent domain proceedings may have a right to certain information held by an entity which is considered critical infrastructure and which is authorized by law to take private property through the use of eminent domain. *See* Prop. Code § 21.024(a).

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,



Ryan T. Mitchell  
Assistant Attorney General  
Open Records Division

RTM/jb

Ref: ID# 339305

cc: Requestor  
(w/o enclosures)