



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 16, 2009

Mr. Shawn P. St. Clair
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue, Suite 2100
Austin, Texas 78701

OR2009-16239

Dear Mr. St. Clair:

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# 361477.

The Rayburn County Electric Cooperative ("Rayburn") received a request for eight categories of information concerning projects of the cooperative. You claim that the submitted information is not subject to the Act. In the alternative, you claim that the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 Rayburn, a non-governmental body, is authorized by law to take private property through the use of eminent domain. However, you claim Rayburn is excepted from the requirements of section 552.0037 by section 21.024(i) of the Property Code.

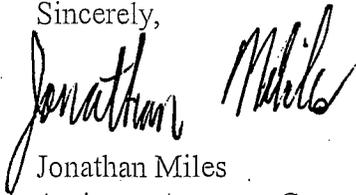
Section 21.024(i) provides “[s]ection 552.0037, Government Code, does not apply in relation to those entities described in Subsection (a).” Prop. Code § 21.024(i). The entities described in subsection are “[a] utility, a common carrier, or a transporter of oil, gas, or the products of oil or gas[.]” *Id.* § 21.024(a). Thus, under section 21.024(i), section 552.0037 does not apply to a utility, a common carrier, and a transporter of oil, gas, or the products of oil or gas. *See id.* § 21.024(a), (i). We note chapter 21 of the Property Code does not define the term, “utility.”

You state Rayburn indirectly provides electricity to the public and in providing this service, Rayburn utilizes facilities for which it is required to obtain a certificate of convenience and necessity under chapter 37 of the Utilities Code. *See* Util. Code § 37.051 (addresses requirement of certificate of convenience and necessity). Section 37.001(b) of the Utilities Code provides that, for purposes of chapter 37, the definition of an electric utility includes an electric cooperative. *Id.* § 37.001(b). Thus, because Rayburn is subject to chapter 37, we agree it is a “utility” for purposes of section 21.024(a) of the Property Code. 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 Rayburn. We thus conclude the Act does not require Rayburn to release the requested information in response to a request made under the Act.¹

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

¹As we are able to make this determination, we do not address your argument that section 552.0037 of the Government Code does not require release of the requested information in this instance because the information requested is not related to the taking of private property through the use of eminent domain.

Ref: ID# 361477

Enc. Submitted documents

c: Requestor
(w/o enclosures)