



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 2, 2012

Mr. James R. Evans, Jr.
Counsel for the Rusk County Appraisal District
Hargrove & Evans, LLP
4425 Mopac South, Building 3, Suite 400
Austin, Texas 78735

OR2012-06345

Dear Mr. Evans:

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# 452439.

The Rusk County Appraisal District (the "district"), which you represent, received a request for information pertaining to the 2011 appraisal of the Martin Lake Generating Plant property. You state you will provide some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. You also state you have notified two interested third parties of the request for information and of their right 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 received comments submitted by the interested third parties. *Id.* We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes, such as section 22.27 of the Tax Code, which 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

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.

(b) Information made confidential by this section may be disclosed:

...

(8) to an employee or agent of a taxing unit responsible for auditing, monitoring, or reviewing the operations of an appraisal district[.]

Tax Code § 22.27(a), (b)(8). You state the submitted information was furnished to the district and to the district's outside appraiser by the plant owner in connection with the appraisal of the generating plant. You further state that the district and the district's outside appraiser promised the plant owner confidentiality. Thus, we find section 22.27(a) of the Tax Code is applicable to the submitted information. However, the requestor asserts a right of access to the submitted information under section 22.27(b)(8) of the Tax Code, stating that his employer, the Tatum Independent School District ("Tatum I.S.D."), is responsible for auditing, monitoring, or reviewing the operations of the district. The district informs us "[t]he requestor has cited no law, rule, decision, agreement, or any other authority supporting his assertion that Tatum I.S.D. is somehow responsible for conducting such activities" and is "unaware that Tatum I.S.D. has those responsibilities." Whether Tatum I.S.D. is responsible for auditing, monitoring, or reviewing the operations of the district for purposes of section 22.27(b)(8) is a question of fact. This office cannot resolve disputes of fact in its decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Accordingly, we must accept the district's representation that Tatum I.S.D. is not responsible for auditing, monitoring, or reviewing the operations of the district. Therefore, we find the requestor does not have a right of access under section 22.27(b)(8). Accordingly, based on the district's representations and our review, the submitted information is confidential under section 22.27(a) of the Tax Code and must be withheld under section 552.101 of the Government Code. As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/som

Ref: ID# 452439

Enc. Submitted documents

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(w/o enclosures)

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