



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 13, 2014

Mr. William Pinkham
Counsel for Carson County Appraisal District
Perdue, Brandon, Fielder, Collins & Mott, L.L.P.
P.O. Box 9132
Amarillo, Texas 79105

OR2014-10173

Dear Mr. Pinkham:

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# 529206.

The Carson County Appraisal District (the "district"), which you represent, received a request for (1) the division orders submitted to the district by Petrolia Group LLC for certain royalty owners; (2) the names, addresses, and ownership percentages for each royalty owner; and (3) copies of related oil and gas or mineral leases. You state you do not have the requested oil and gas or mineral leases.¹ You claim the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.² We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we must address the district's responsibilities under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1–2 (1990).

² We assume that 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 that those records contain substantially different types of information than that submitted to this office.

asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(b). Additionally, under section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). You do not inform us when the district received the request for information, nor have you submitted a copy of a post-marked envelope containing the request. *See id.* § 552.301(e)(1)(C); *see also id.* § 552.301(a-1). Because of this, we must assume the district received the request on the first business day after the request is dated, which is January 27, 2014. Thus, the district's ten-business-day deadline under section 552.301(b) was February 10, 2014 and the district's fifteen-business-day deadline under section 552.301(e) was February 18, 2014. However, the envelopes containing your request for a ruling from this office and the documents required by section 552.301(e) are both postmarked May 7, 2014. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Therefore, we conclude the district failed to comply with the procedural requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Your claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure; therefore we will consider the applicability of this exception.

Section 25.01(c) of the Tax Code provides as follows:

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 must be 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). You inform us the information at issue was provided to Pritchard & Abbott, Inc., an outside appraiser that appraises certain properties for the district. However, you do not inform us as to whether the information at issue constitutes supporting data for a final appraisal. Therefore, to the extent the information constitutes supporting data for the purposes of section 25.01(c), such information is a public record which must be released to the requestor. *See* Tax Code § 22.27(b)(6) (information made confidential by section 22.27(a) may be disclosed if and to the extent the information is required to be included in a public document or record that the appraisal office is required to prepare or maintain). To the extent the information at issue does not constitute supporting data for the purposes of section 25.01(c), we will consider your argument.

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, such as section 22.27 of the Tax Code, which provides 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.

Tax Code § 22.27(a). You indicate the district is an "appraisal office" for purposes of section 22.27(a). You state the information at issue was furnished to the district by property owners in connection with the appraisal of property and under promises of confidentiality.

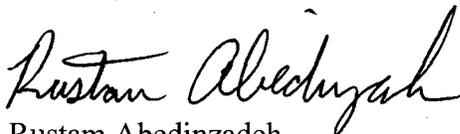
Based on your representations, we find that to the extent the submitted information is not otherwise subject to section 25.01(c) of the Tax Code, this information is confidential under section 22.27(a) and must be withheld under section 552.101 of the Government Code. *See* Open Records Decision No. 387 (1983) (stating, among other things, that names and addresses of owners and ownership interest of each owner contained in division orders of wells and leases provided to appraisal district under a promise of confidentiality are confidential pursuant to section 22.27 of the Tax Code).

In summary, to the extent the information at issue constitutes supporting data for purposes of section 25.01(c) of the Tax Code, it must be released to the requestor. To the extent the information at issues does not constitute supporting data for purposes of section 25.01(c) of the Tax Code, the information is confidential under section 22.27(a) of the Tax code and must be withheld under section 552.101 of the Government Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/eb

Ref: ID# 529206

Enc. Submitted documents

c: Requestor
(w/o enclosures)