



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 20, 2016

Mr. Jonathan L. Almanza
Assistant District Attorney
Hidalgo County Criminal District Attorney's Office
100 North Closner, Room 303
Edinburg, Texas 78539

OR2016-08854

Dear Mr. Almanza:

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# 606507 (File# 2016-0010(59)-DA.CO).

Hidalgo County (the "county") received a request for all "notices, citations, findings or noncompliance issuances" to the county from the Texas Commission on Environmental Quality or the Texas Water Development Board for a specified time period.¹ You state the county will release some information. You claim the submitted information is excepted from disclosure under section 552.125 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹We note the governmental body sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We 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.

Section 552.125 of the Government Code excepts from disclosure “[a]ny documents or information privileged under the Texas Environmental, Health, and Safety Audit Privilege Act” (the “TEHSAP”). Gov’t Code § 552.125. Section 3(a) of article 4447cc of the Texas Civil Statutes, the TEHSAP, provides:

(4) “Environmental or health and safety audit” or “audit” means a systematic voluntary evaluation, review, or assessment of compliance with environmental or health and safety laws or with any permit issued under an environmental or health and safety law conducted by an owner or operator, an employee of an owner or operator, . . . or an independent contractor of:

(A) a regulated facility or operation; or

(B) an activity at a regulated facility or operation.

V.T.C.S. art. 4447cc, § 3(a)(4). An audit report, which consists of all the documents produced from an environmental or health and safety audit, including findings, recommendations, exhibits, and communications associated with an audit, is privileged under section 5(a) of the TEHSAP. *See id.* §§ 4(a), (b), 5(a). However, section 8(a) of the TEHSAP provides the privilege does not apply to:

(1) a document, communication, datum, or report or other information required by a regulatory agency to be collected, developed, maintained, or reported under a federal or state environmental or health and safety law;

(2) information obtained by observation, sampling, or monitoring by a regulatory agency; or

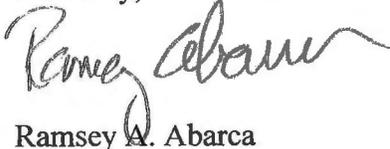
(3) information obtained from a source not involved in the preparation of the environmental or health and safety audit report.

Id. § 8(a)(1)-(3). You generally assert the submitted information is privileged under the TEHSAP and, thus, excepted from disclosure under section 552.125 of the Government Code. However, you have not provided any explanation demonstrating that any portion of the submitted information is associated with an environmental or health and safety audit. Thus, we conclude you have not established any portion of the submitted information is privileged under section 5 of the TEHSAP. Accordingly, the county may not withhold any of the submitted information under section 552.125 of the Government Code. As no other exceptions to disclosure have been raised, the submitted information must be released.

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,

A handwritten signature in black ink, appearing to read "Ramsey Abarca". The signature is written in a cursive style with a large initial "R".

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 606507

Enc. Submitted documents

c: Requestor
(w/o enclosures)