



The Attorney General of Texas

June 27, 1983

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Affirmative Action Employer

Ms. Frances M. Shuffield CTA/RPA
Tax Assessor-Collector
P. O. Box 712
Midland, Texas 79702

Open Records Decision No. 387

Re: Whether "division orders" relating to ownership of wells and leases on appraisal rolls are excepted from public disclosure by article 22.27 of the Tax Code

Dear Ms. Shuffield:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether so-called "division orders" relating to the ownership of wells and leases which appear on the appraisal roll are excepted from public disclosure.

You contend that the requested information is excepted from disclosure under section 3(a)(1) of the act which excepts information deemed confidential by law, either constitutional, statutory or common law. Specifically you contend that the information is excepted by section 22.27 of the Tax Code which provides in pertinent part:

(a) Rendition statements and real and personal property reports filed with an appraisal office and information voluntarily disclosed to an appraisal office 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:

(1) in a judicial or administrative proceeding pursuant to a lawful subpoena;

(2) to the person who filed the statement or report or the owner of property subject to the statement, report, or information or to a representative of either authorized in writing to receive the information;

(3) to the director of the State Property Tax Board and his employees authorized by him in writing to receive the information or to an assessor or a chief appraiser if requested in writing;

(4) in a judicial or administrative proceeding relating to property taxation to which the person who filed the statement or report or the owner of the property that is a subject of the statement, report, or information is a party;

(5) for statistical purposes if in a form that does not identify specific property or a specific property owner; or

(6) 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.

(c) A person who legally has access to a statement or report or to other information made confidential by this section or who legally obtains the confidential information commits a Class B misdemeanor if he knowingly:

(1) permits inspection of the statement or report by a person not authorized to inspect it by Subsection (b) of this section; or

(2) discloses the confidential information to a person not authorized to receive the information by Subsection (b) of this section.

The requested information consists of materials developed by oil and gas companies and submitted to the appraisal firm with which the appraisal district has contracted. The materials list the name and address of the owner, and the ownership interest of each owner, for

each well and lease worked by the oil company submitting the materials. The oil companies gave the materials to the appraisal firm in return for a promise of confidentiality made by the appraisal firm on behalf of the appraisal district. After compiling the information, the appraisal firm delivered it to the appraisal district. You inform us that an employee of the appraisal firm, as a courtesy, delivered to you a copy of the materials. The employee did so without the knowledge or the approval of the appraisal district. You also inform us that this same information is contained on the appraisal rolls, but in a format different from that requested.

This office has frequently concluded that information may be transferred between governmental agencies without destroying its confidential character. Attorney General Opinions H-917, H-836 (1976); H-242 (1975); Open Records Decision Nos. 272 (1981); 183 (1978). This office has also concluded that information compiled by one governmental entity independently of a second governmental entity is not necessarily excepted from public disclosure merely because that information is excepted from disclosure in the hands of the second entity. See Open Records Decision No. 338 (1982). In this instance, however, no voluntary or knowing transfer took place, nor has the county tax assessor-collector compiled the requested information independently of the appraisal district. An employee of the appraisal firm, with which the appraisal district had contracted, gave you, without being so authorized, a copy of the materials now being requested. In this instance, a governmental body which has come into receipt of information which it is without authority to possess is invoking an exception from disclosure which rightfully should be invoked by the proper custodian of the records. It is clear that, had the request been made of the appraisal district, the district could properly invoke section 22.27 of the Tax Code and section 3(a)(1) of the Open Records Act, V.T.C.S., article 6252-17a, to withhold from disclosure the requested information obtained pursuant to a confidentiality agreement. The issue is whether the exception, in effect, follows the material in an instance in which there has been no knowing or voluntary transfer from the proper custodian of the records to another party.

Although this office has held that a governmental body that voluntarily furnishes information to a newspaper may not later claim that that information may be withheld from others, Open Records Decision No. 162 (1977), it has never held that information which is not voluntarily released by a governmental body, but which nevertheless comes into the possession of another party, is henceforth automatically available to everyone. See Open Records Decision No. 376 (1983). In our opinion, a governmental body may invoke the act's exceptions to withhold information which the legislature has specifically declared to be confidential, when it is not the proper custodian of the information but possesses it without a voluntary

transfer from the proper custodian. We therefore conclude that the requested information, which was obtained pursuant to a confidentiality agreement, is excepted from required public disclosure by section 3(a)(1) of the act. Information contained in the division order book not obtained pursuant to such an agreement is, of course, open for public examination. We note, however, that if the appraisal district fails to make any attempt to retrieve the information from your office, it will be held to have voluntarily transferred the information in violation both of the confidentiality agreements and of the six enumerated situations listed in subsection (b) which permit limited disclosure of such information. In such event, it would be held to be open to the public.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive style with a large, stylized "J" and "M".

J I M M A T T O X
Attorney General of Texas

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