



**THE ATTORNEY GENERAL
OF TEXAS**

September 22, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. David E. Whitmire
Chief Appraiser
Harrison Central Appraisal District
P. O. Box 818
Marshall, Texas 75671

Dear Mr. Whitmire:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 5607; this decision is OR89-304.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

You inform us that you have received a written request for information that you consider to be excepted from public disclosure by subsections 3(a)(1), 3(a)(4), and 3(a)(13) of the act. You have enclosed for our inspection samples of the information requested, numbered items 1 through 11. We have examined the items that you have submitted to us; they consist of the following:

- Item 1: A rendition or inventory of property, consisting of land and improvements and furniture and fixtures.
- Item 2: A copy of a social security insurance card containing the social security number of the beneficiary, who is an applicant for a homestead exemption for the disabled and a copy of a letter from the Veterans

Administration declaring that the applicant has a compensable service connected disability of 70 percent due to "anatomical loss or loss of use of one or more limbs, total blindness in one or both eyes, or paraplegia."

- Item 3: A highlighted number on the appraisal card under a column titled "Remarks," which appears to be the selling price of the property.
- Item 4: A highlighted number on the back of the appraisal card under a column titled "Consideration," which appears to be the selling price of the property.
- Item 5: A highlighted number on the front of the appraisal card, again under a column titled "Remarks," which appears to be the selling price of the property.
- Item 6: Application for special valuation of agricultural land under article VIII, section 1-d, of the Texas Constitution.
- Item 7: Copy of a mechanic's and material-man's lien stating the cost of the improvements for which the property owner contracted, a copy of a form entitled "Uniform Residential Appraisal Report," with the sales price of the property being appraised, the sales prices of three comparable properties, and the appraiser's estimated value of the property calculated by both a cost approach and a comparative-sales approach, and a copy of the minutes of the appraisal review board hearing on the property.
- Item 8: A rendition for a mobile home.

- Item 9: Application for special valuation of open-space land under article VIII, section 1-d-1, of the Texas Constitution.
- Item 10: Copy of a request for sales price information that states that such information will be confidential.
- Item 11: (mistakenly labeled "Item 10"): Copy of a so-called "division order," which identifies the owner, the operator, the property description, the amount of acreage owned, and the percentage interest of mineral interests owned by the owner.

You first ask:

Does the request by Ms. Celeste Faris of Winchester Production Company violate Section 22.27 of the Property Tax Code related to rendition statements, real and personal property reports filed with the district, and information disclosed to the district about real and personal property sales prices after a promise this information will be held confidential? (Items 1, 3, 4, 5, 6, 8, 9, & 10)

Subsection 3(a)(1) of the Open Records Act excepts from required public disclosure:

information deemed confidential by law, either Constitutional, statutory, or by judicial decision.

Section 22.27 of the Tax Code makes confidential certain information in the custody of appraisal districts and provides the following 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 or the State Property Tax Board 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 of the owner or 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.¹

Of the numbered items that you have submitted to us for our inspection, we conclude that only items 1, 8, and 10 fall within section 22.27 of the code. Items 1 and 8 are renditions and item 10 is a section 22.27 confidentiality agreement. Items 3, 4, and 5 appear to be the selling prices of property but are unaccompanied by section 22.27 confidentiality agreements; they are open to disclosure. We note, however, that even items 1, 2, and 10 are open to disclosure if the requirements of section 25.195 of the Tax Code are met. Enclosed is a copy of Open Records Decision No. 500 (1988), which discusses the scope of sections 22.27 and 25.195 of the code.

You next ask:

Does the information being requested and as described in the enclosed items 1, 3, 4, 5, 6, 7, 8, & 9 fall within the Open Records Act, Article 6252-17a, Section 3(a)(1) 'information deemed confidential by law,

1. We note that section 25.195 of the Tax Code affords an affirmative right of access to certain persons requesting information governed by that section:

After the chief appraiser has submitted the appraisal records to the appraisal review board as provided by Section 25.22(a) of this code, a property owner or his designated agent may inspect the appraisal records relating to property of the property owner, together with supporting data and schedules used in making appraisals for the appraisal records relating to that property.

You do not indicate whether the information that is the subject of your request for a decision is sought pursuant to section 25.195 of the Tax Code. The request letter submitted to you, which you have furnished to this office, makes no reference to that section and does not assert that such information constitutes "appraisal records relating to property of the property owner." Therefore, for purposes of this decision, we assume that section 25.195, Tax Code, does not govern this request. See Open Records Decision No. 500 (1988).

either [c]onstitutional, statutory, or by
judicial decision'?

The only provision covering the sorts of information that you have submitted to us that even arguably falls within subsection 3(a)(1) is section 22.27 of the Tax Code, which we already have discussed. The only item of information about which you ask in your second question that we did not discuss in your first question is item 7. Item 7 appears to include a copy of a mechanic's and materialman's lien stating the cost of the improvements for which the property owner contracted, a copy of a form entitled "Uniform Residential Appraisal Report," with the sales price of the property being appraised, the sales prices of three comparable properties, and the appraiser's estimated value of the property calculated by both a cost approach and a comparative-sales approach, and the minutes of the appraisal review board hearing on the property.

Neither the lien nor the copy of the minutes of the appraisal review board hearing even arguably fall within section 22.27 of the code; they are open to disclosure. The sales prices of the three comparable properties do not fall within section 22.27, because there is no accompanying confidentiality agreement. The appraiser's estimated value of the property calculated by both a cost approach and a comparative-sales approach do not fall within section 22.27 and are open to disclosure. Enclosed is a copy of Open Records Decision No. 344 (1982), which concluded that analogous information contained in the school district market value study conducted by the State Property Tax Board is open to disclosure.

You next ask:

Does the information being requested and as described in the enclosed items 1, 3, 4, 5, & 7 fall within the Open Records Act, Article 6252-17a, Section 3(a)(4) 'information which, if released, would give advantage to competitors or bidders'?

Subsection 3(a)(4) of the Open Records Act protects from required public disclosure:

information which, if released, would give advantage to competitors or bidders.

The primary purpose of subsection 3(a)(4) is to protect the government's purchasing interests by preventing a competitor or bidder from gaining an unfair advantage over

other competitors or bidders. The test for determining whether subsection 3(a)(4) applies is whether there has been a showing of some specific actual or potential harm in a particular competitive situation. In this instance, governmental bidding or purchasing is involved; consequently, subsection 3(a)(4) may not be invoked to withhold from disclosure any of the information sought here.

You next ask:

Does the information being requested, and as described in the enclosed item 10, fall within the Open Records Act, Article 6252-17a, Section 3(a)(13) 'geological and geophysical information'?

You have submitted to us two items of information that you have designated "Item 10." We have designated the material to which you refer in your question as "Item 11." Item 11 is a so-called "division order." A "division order" is a document typically prepared by an oil company and submitted to a private appraisal firm, which then provides the information to an appraisal district indicating the name and address of the owner and the ownership interest of each owner for each well and lease operated by that oil company. See Open Records Decision No. 387 (1983).

Subsection 3(a)(13) of the Open Records Act excepts from required public disclosure:

geological and geophysical information and data including maps concerning wells, except information filed in connection with an application or proceeding before any agency or an electric log confidential under Subchapter M, chapter 91 Natural Resources Code.

The purpose of subsection 3(a)(13) is to protect the commercial value of geological and geophysical information, in part to enable the governmental body to obtain the information in the future. See Open Records Decision No. 504 (1988).

In Open Records Decision No. 504 (1988), this office held that the general principles applicable under subsection 3(a)(10) apply to subsection 3(a)(13). Subsection 3(a)(13) protects the commercial value of geological information by preventing the release of information when such release would cause substantial competitive injury. Open Records Decision No. 504 at 6. In this instance, there is no

indication that the division orders were submitted to you on a voluntary basis, and, in any event, you have failed to show how release of the information would impair your ability to obtain such information in the future. Moreover, and more importantly, we fail to see how the disclosure of such information would place an oil company in a substantial competitive disadvantage. Therefore, we conclude that the release of division orders is not excepted by subsection 3(a)(13) of the Open Records Act.

Finally you ask:

[Would the release of] information being requested as described in the enclosed item 2 violate the United States 1st Amendment right to privacy?

We understand you to ask about the applicability of both common-law privacy and constitutional privacy to Item 2. Texas courts recognize four categories of common-law privacy: (1) appropriation (*i.e.*, commercial exploitation of the property value of one's name or likeness), (2) intrusion (*i.e.*, invasion of one's physical solitude or seclusion), (3) public disclosure of private facts, and (4) false light in the public eye (a theory analogous to defamation). It is with (3), the public disclosure of private facts, that you are concerned. The Texas Supreme Court set forth the primary test under (3) in the following fashion: Information may be withheld under subsection 3(a)(1) only if the information contains highly embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. See Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668, 686 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).

The Texas Supreme Court has recognized that subsection 3(a)(1) protects constitutional privacy as well as common-law privacy. The Texas Supreme Court indicated that constitutional privacy protects information within "zones of privacy" described by the United Supreme Court, which include matters relating to marriage, procreation, contraception, family relationships, and child rearing and education. Id. at 678-79. The constitutional right to privacy consists of two related interests: (1) the individual interest in independence in making certain kinds of important decisions, and (2) the individual interest in avoiding disclosure of personal matters. See id. at 679. It is with the second interest, in non-disclosural privacy, that you are concerned.

Mr. David E. Whitmire
September 22, 1989
Page 9

In this instance, the information that you suggest may fall within a "right to privacy" consists not of information revealing intimate details about a person's physical disability, but rather the fact that such person is disabled for purposes of federal law. We conclude that information revealing merely that a person is disabled, without revealing any intimate facts regarding such a disability, coupled with the obvious public interest in assuring that a person seeking special tax-exempt status in fact so qualifies, does not trigger the protection afforded by either a common-law or a constitutional right of privacy. Therefore, we conclude that such information is open to disclosure.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-304.

Yours very truly,

Open Government Section
of the Opinion Committee

Open Government Section
of the Opinion Committee
Prepared by Jim Moellinger
Assistant Attorney General

JRM/bc

Ref.: ID# 5607