



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2010

Ms. Ruth H. Soucy
Deputy General Counsel for Open Records
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2010-05571

Dear Ms. Soucy:

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# 376564 (Comptroller ID# 6151665974).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for the AP-180 forms for eleven specified wells. You state you have provided the requestor with a portion of the requested information. You also state the comptroller has no information regarding one of the specified wells.¹ You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim 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." Gov't Code § 552.101. This section encompasses section 201.057 of the Tax Code, which provides in relevant part:

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

(f) To qualify for the exemption or tax reduction provided by this section, the person responsible for paying the tax must apply to the comptroller. The application must contain the certification of the commission that the well produces high-cost gas and, if the application is for a well spudded or completed after September 1, 1995, must contain a report of drilling and completion costs incurred for each well on a form and in the detail as determined by the comptroller.

...

(h) Information regarding drilling and completion costs included on an application under Subsection (f) is confidential and may not be disclosed, except to the extent aggregated with other similar information to produce industry averages. Unauthorized disclosure is an offense subject to the same penalty as provided by Section 111.007 for unauthorized disclosure of federal tax return information.

Tax Code § 201.057(f), (h). You indicate the AP-180 Texas Request for Approval of High Cost Gas Exemption or Reduced Tax Rate forms were submitted to the comptroller pursuant to section 201.057(f). You further explain the AP-180 forms contain information regarding the drilling and completion costs made confidential by section 201.057(h). We note the information at issue is not aggregated with other similar information to produce industry averages. *See id.* § 201.057(h). Accordingly, we find the information regarding the drilling and completion costs in the submitted AP-180 forms, which we have marked, must be withheld under section 552.101 in conjunction with section 201.057(h) of the Tax Code. However, the remaining information you have marked does not consist of information regarding drilling and completion costs and, therefore, may not be withheld on that basis. As you raise no further exceptions to disclosure, the remaining information must be released to the requestor.

You also ask this office to issue a previous determination that would authorize the comptroller to withhold drilling and completion costs under section 552.101 of the Government Code in conjunction with section 201.057(h) of the Tax Code without the necessity of again requesting a decision by this office under the Act. *See Gov't Code* § 552.301; Open Records Decision No. 673 (2001) (previous determinations). We decline to issue such a previous determination at this time.

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,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal flourish extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 376564

Enc. Submitted documents

c: Requestor
(w/o enclosures)