



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 16, 2014

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

OR2014-12257

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# 529257.

The Hutchinson County Appraisal District (the "district"), which you represent, received a request for copies of each division order submitted to the district by a specified entity for each royalty owner; copies of any list of the names and addresses for each royalty owner within each lease; and copies of any oil and gas or mineral leases the district has on file for each of the referenced leases. You state the district does not have information responsive to the third category of the request.<sup>1</sup> You claim the submitted 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.<sup>2</sup>

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<sup>1</sup>We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>We assume 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.

Initially, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) 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 state the district received the request for information on both January 30, 2014, and February 8, 2014. Based upon the discrepancy between the two dates you have represented you received the same request for information, we are unable to determine the date the district received the request for information. Nevertheless, regardless of when the district received the request at issue, you did not submit a request for a ruling to this office until May 7, 2014, which is more than ten business days after either date you represent you received the request.<sup>3</sup> Accordingly, we conclude the district failed to comply with the procedural requirements mandated by 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 requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. You raise section 552.101 of the Government Code, which can provide a compelling reason to overcome the presumption of openness of section 552.302; as such, we will address your argument under this exception for the submitted information.

Next, you state the submitted information was prepared for the district by Pritchard and Abbott ("Pritchard"), an outside appraiser. Section 25.01(c) of the Tax Code provides as follows:

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<sup>3</sup>Although you assert your May 7, 2014, brief is timely because it was sent within ten days of receiving a complaint notice from this office, we note the complaint notice did not extend the ten- or fifteen-business-day deadlines of the original request.

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 were 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). Subsection 22.27(b)(6) of the Tax Code provides information made confidential by subsection 22.27(a) of the Tax Code may be disclosed if and to the extent such information is required to be included in a public document or record the appraisal office is required to prepare or maintain. *See* Tax Code § 22.27(b)(6). Therefore, to the extent the submitted information constitutes an appraisal or supporting data for purposes of section 25.01(c), such information is a public record which must be released to the requestor. To the extent the submitted information does not constitute an appraisal or supporting data for the purposes of section 25.01(c), we will consider your arguments under section 552.101 of the Government Code.

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 states 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 state the information the district seeks to withhold consists of documents generated by Pritchard from information obtained from property owners under

a promise of confidentiality. Upon review, we find to the extent the requested 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 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 submitted information constitutes an appraisal or supporting data for purposes of section 25.01(c), such information is a public record which must be released to the requestor. To the extent the requested information is not otherwise subject to section 25.01(c) of the Tax Code, the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax 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](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,



Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 529257

Enc. Submitted documents

c: Requestor  
(w/o enclosures)