



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 21, 2016

Mr. James R. Evans, Jr.
Counsel for the Gonzalez County Appraisal District
Hargrove & Evans, LLP
Building 3, Suite 400
4425 Mopac South
Austin, Texas 78735

OR2016-23696

Dear Mr. Evans:

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# 631214.

The Gonzalez County Appraisal District (the "district"), which you represent, received a request for a specified mineral appraisal roll. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.110, and 552.149 of the Government Code. You also state release of this information may implicate the proprietary interests of third parties.¹ Accordingly, you state, and provide documentation showing, you

¹The third parties are Atlas Fuel Supply; Av-Tech Resources; Barnett Energy Inc.; Baron Energy Inc.; Burlington Resources Oil & Gas; CWS Aceite Operating Inc.; D. Shel Oil, Inc.; Devon Energy Production Co. ("Devon"); Dominion Production; Diamond M. Drilling & Expl Co.; CL&F Operating L.L.C.; Home Petroleum Company; Yates Energy Corp.; Fair Oil LTD Company; 1776 Energy Operating L.L.C. ("1776"); Impetro Operating L.L.C.; OKY Investments Inc.; Byrd Operating Co.; Sellers Lease Service Inc.; Rosetta Resource Operating ("Rosetta"); Sabine Oil & Gas Corp.; PPC Operating Co. L.L.C.; Penn Virginia Oil & Gas L.P.; Modern Exploration Inc.; Lonestar Operating L.L.C.; MCA Petroleum; GeoSouthern Energy L.L.C.; Earthstone Operating L.L.C.; Enervest Operating L.L.C.; Battlecat Oil & Gas L.L.C.; Browning Oil Company Inc.; BXP Operating L.L.C.; Bastrop Energy Group; SN Operating L.L.C.; Enerquest Oil & Gas L.L.C.; Marathon Oil EF; Western Energy Group L.L.C.; Tidal Petroleum Inc.; CML Exploration L.L.C.; Mike Thomas; Tri-Force Exploration L.L.C.; United Operating L.L.C.; Seguro Well Service Inc.; Mark L. Shidler; Talaria Oil & Gas L.L.C.; Primera Energy L.L.C.; Progenies Operating L.L.C.; LLT Energy Inc.; Lucas Energy Inc.; Matador Production ("Matador"); Origin Production Co Inc.; Pie Operating L.L.C.; Premium Exploration Co.; Hunt Oil Company; Jad Oil Inc.; K&L Oil L.L.C. ("K&L"); Lacy 03 L.L.C.; Harrier Holdings LTD; Greehey Co Inc.; Gonzales Properties L.L.C.; Don H Ford & Assoc.; Finaly Resources L.L.C.; First Rock Inc.; and Pritchard & Abbot Inc. ("P&A").

notified the third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from P&A, Devon, K&L, 1776, Matador, and Rosetta. We have also received comments from the Texas Oil and Gas Association ("TXOGA"). *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted representative sample of information.²

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have only received comments from P&A, Devon, K&L, 1776, Matador, and Rosetta explaining why the information should not be released. Therefore, we have no basis to conclude any of the remaining third parties have a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the district may not withhold any of the information at issue on the basis of any proprietary interest the remaining third parties may have in it.

Next, you note the requestor seeks the requested information in electronic format. Section 552.228 of the Government Code requires a governmental body to provide a copy of the public information in the requested medium if it has the technological ability to do so without the purchase of software or hardware. *See* Gov't Code § 552.228(b)(1), (2). However, you state, "a requestor could manipulate the electronic mineral appraisal roll to list net revenue interests according to lease number, thereby enabling the requestor to build a division order that would otherwise be confidential." Therefore, you object to releasing the requested information in electronic format.³ We note, however, this office has determined the Act does not permit the consideration by a governmental body or this office of a

²We 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 those records contain substantially different types of information than that submitted to this office.

³In this instance, you do not inform this office you have released the information or made the information available to the requestor in an electronic medium. Thus, we address your arguments against release of the requested information.

requestor's intended use of information when responding to open records requests. *See id.* § 552.222(a) (stating governmental body may not inquire into purpose for which information will be used); *see also* Open Records Decision Nos. 508 at (1988) (motives of a person seeking information under the Act are irrelevant), 51 (1974). Additionally, a governmental body is not responsible for the use that may be made of information that it releases to the public. *See* Gov't Code § 552.204; ORD 508 at 3 (use that may be made of information does not control whether it falls within exception to disclosure). A governmental body must release the information to which a requestor seeks access unless the information falls within the scope of an exception to public disclosure under the Act. *See* Gov't Code § 552.221; Open Records Decision No. 664 (2000). Although you have not submitted the requested information to this office for review in an electronic format, we understand the district has the technological capability to provide the requested information to the requestor in electronic format. Accordingly, to the extent the submitted information is subject to release, the district must provide the submitted information to the requestor in electronic format. *See* Gov't Code § 552.228(c).

You state the submitted information was prepared for the district by P&A, an outside appraiser. Section 25.01(c) of the Tax Code provides as follows:

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 must be 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). Exceptions to disclosure under the Act, such as sections 552.110 and 552.149 of the Government Code, generally do not apply to information that is made public by other statutes, such as section 25.01(c). *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). However, you state the requested information comprises working papers and matters of privileged or proprietary nature, and does not constitute "supporting data" for the purposes of section 25.01(c). Accordingly, we will consider your arguments under sections 552.101, 552.110, and 552.149 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 provides, 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.

(b) Information made confidential by this section may be disclosed:

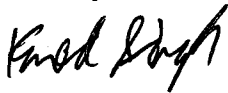
....
(6) if and to the extent the information is required to be included in a public document or record that the appraisal office is required to prepare or maintain[.]

Tax Code § 22.27(a), (b)(6). We understand the district is an “appraisal office” for purposes of section 22.27(a). You state the submitted information was provided to the district in connection with the appraisal of property and under a promise of confidentiality. However, we note the information at issue is required to be included in public appraisal rolls pursuant to section 9.3004 of title 34 of the Texas Administrative Code. *See* 34 T.A.C. § 9.3004(b)(1)-(3) (appraisal records shall contain the name and address of the owner, the legal description of the real property, and the separately taxable estates or interests in real property). Thus, we find the information at issue is subject to section 22.27(b)(6) of the Tax Code and therefore is not confidential pursuant to section 22.27(a). *See* Open Records Decision No. 347 at 6 (1982) (subsection 22.27(b)(6) expressly permits disclosure of information which, while confidential in the rendition statement, is also required to be in public appraisal roll). Accordingly, the district may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. Although the district, P&A, Devon, K&L, 1776, Matador, Rosetta, and TXOGA claim sections 552.104, 552.110, 552.113, and 552.149 of the Government Code for the submitted information, we note the exceptions to disclosure found in the Act, such as sections 552.104, 552.110, 552.113, and 552.149, generally do not apply to information made public by other statutes. *See* ORDs 623 at 3, 525 at 3. Accordingly, the district may not withhold the submitted information under section 552.104, section 552.110, section 552.113, or section 552.149 of the Government Code. Therefore, the district must release the submitted information.

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,



Kavid Singh
Assistant Attorney General
Open Records Division

KVS/bhf

Ref: ID# 631214

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Parties
(w/o enclosures)