

Low Swinney Evans & James, PLLC
ATTORNEYS AT LAW

Ryan L. James
(512) 379-5800

rjames@lsejlaw.com
623 S. Baker Cir., Leander, TX 78641

December 12, 2018

Douglas Kirk
Via Email: dougkirk@gvtc.com

Re: Open Records Opinion Request by the Comal Appraisal District

Dear Mr. Kirk,

On behalf of the Comal Appraisal District (“Comal AD”), I write to inform you that that the appraisal district has withheld some information that was requested in your November 30, 2018 Open Records Request regarding Property ID 414855 and related information. Specifically, renditions, which were requested in Request No. 12, have been withheld because they are confidential under Tex. Tax Code § 22.27. In addition, responsive documents to Request Nos. 1-9, 11, and 13 have been withheld under Tex. Gov’t Code §552.207. The document responsive to Request No. 10 is attached to this letter.

As required by Tex. Gov’t Code § 552.301, the Comal AD has asked for a decision from the Attorney General about whether the withheld information is within an exception to public disclosure. A copy of the request, excluding the withheld information, is attached to this letter.

Sincerely Yours,

/s/ Ryan L. James

Ryan James

cc: Rufino H. Lozano, Chief Appraisal, Comal Appraisal District, lozanr@co.comal.tx.us;
Open Records Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas
78711-2548 (w/o enclosure)

COMAL APPRAISAL DISTRICT
900 S SEGUIN AVENUE
NEW BRAUNFELS, TEXAS 78130
PHONE 830-625-8597

AFFIDAVIT FOR PROTEST HEARING

Description of Property

STATE OF TEXAS
COUNTY OF COMAL

Before me, the undersigned authority, on this day personally appeared members of the Appraisal Review Board who, being by me duly sworn, on oath deposed and said:

"I have not communicated with another person about the evidence, arguments, facts, merits, or any other matters related to the property owner's protest, nor have I communicated with another person about the property that is the subject of this protest, excluding cases where the property was used as part of a sample or compared with other properties in another proceeding before the board, and excluding instances in which I was expressly permitted under the Tax Code, Chapter 41, to communicate with the board of another person about the property owner's protest of the property under protest."

Witness my hand, this the day, _____ day of _____, 2018

Gry Anderson

Cynthia Bennett

Jimmie Binkley

Scott Kay

Kenneth Joe Kuehler

Barry Power

Donna Schmidt

Robert "Bob" Shupik

Barbara Stubblefield

SUBSCRIBED AND SWORN TO before me this day, _____ day of _____, 2018

Name
Notary Public State of Texas

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December 12, 2018

The Attorney General of Texas
The Honorable Ken Paxton
P.O. Box 12548
Austin, Texas 78711-2548

Re: Open Records Opinion Request by the Comal Appraisal District

Dear Attorney General Paxton:

I write on behalf of the Comal Appraisal District (Comal AD) which has received a request for information, a copy of which is attached as Exhibit A. The Comal AD seeks your opinion on the propriety of releasing the requested items. This request is submitted within 10 business days of the information request.

Request number 12 seeks renditions given to the Comal AD by all fireworks businesses for tax years 2014 through 2018. Renditions are specifically made confidential pursuant to TEX. TAX CODE § 22.27(a). Your office has opined on many occasions that an appraisal district must not release such items. See, *e.g.*, ORD2018-17286 (July 16, 2018). Therefore, the Comal AD believes that it should under no circumstances release such documents. The requested documents are attached as Exhibit B. We are providing the property owners whose renditions are being requested with notice of this submission for your opinion.

The Comal Appraisal District has complied with Request No. 10, which seeks documents reflecting the names of members of the Comal County Appraisal Review Board (ARB) for 2018.

For the remaining requests, the Comal AD seeks your opinion as to whether the requested documents fall within the litigation exception found in TEX. GOV'T CODE § 552.103. The requestor is an owner of a fireworks business. He protested the value of his several accounts for 2018 to the Comal County ARB. The ARB held a hearing on those protests on November 29, 2018. The ARB issued an order on November 29, 2018, and the order was delivered on December 7, 2018. Pursuant to TEX. TAX CODE § 42.21, the requestor has 60 days from the date of the order was received to bring suit against the Comal AD to contest the order of the ARB. That deadline will pass on February 5, 2019. Thus, as of the date of the request, as well as of this date, it is entirely possible that the requestor will appeal the ARB order, and sue the Comal AD over the value of his properties.

All Mr. Kirk's other requests, 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, and 13, clearly concern matters that go to the substance of Comal AD's appraisal of the properties subject to the protest and the November 29, 2018 hearing. Request Nos. 1 and 2 seek documents that were presented at the ARB hearing on the property, whereas Request Nos. 3 and 5 seek notes and recordings of the ARB hearing on the subject property. Request Nos. 4 and 9 seeks the names of Comal AD employees that were present at the hearing, and information on their state certifications. In addition, Request No. 8 seeks documents signed by Mr. Kirk at the hearing. Because these requests concern the ARB hearing that is within the time-period for judicial review, they relate to a potential TEX. TAX CODE § 42.21 lawsuit against the Comal AD.

The remaining requests relate to Comal AD's determination of appraisal of the subject property and related properties. Specifically, Request Nos. 6, 7, and 13, relate to documents that were utilized by the CAD to appraise the property, and any other documents related to the property. And Request No. 11 seeks notices of appraised value for all similar properties in years 2014-2018. Because Mr. Kirk's protest to the ARB concerned the value of his property, any appeal of the ARB order will relate to the CAD's appraisal. The requested documents concern the factual dispute (i.e., the value) in a potential lawsuit filed under TEX. TAX CODE § 42.21. Further, data on similar properties to the subject is patently potentially relevant to such a litigation under the equal and uniform appraisal provisions of TEX. TAX CODE § 42.26.

It is also the case that Mr. Kirk's request number 8 also encompasses documents related to an active lawsuit against Comal AD. Currently pending in the 207th Judicial District Court of Comal County is Cause No. C2018-1576B, which is styled *Douglas Walker Kirk v. Comal Appraisal District*. That case concerns the 2018 value of a residential property owner by Mr. Kirk. Because request number 8 concerns documents presented by Mr. Kirk at "any other hearing before the Appraisal Review Board in the year 2018" it seeks documents related to the hearing on the property that is subject to review in that case.

Accordingly, these matters are subject to the litigation exception found in TEX. GOV'T CODE § 552.103. That statute plainly applies to any matter "relating to litigation of a civil or criminal nature to which the state or a political subdivision is *or may be* a party." Since the Comal AD may well be a party to litigation regarding the value of the subject property, and because information relating to the appraisal of other similar properties may well be relevant to that litigation, it is excepted from disclosure pursuant to § 552.103. Therefore, the Comal AD submits that this request is an attempt to circumvent the discovery process and that it should not be compelled to respond. See also your recent decision at ORD2018-30261 (December 3, 2018). A representative sample of the information withheld in response to Request Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, and 13 is attached as Exhibit C. If further responsive documents are discovered, the Comal Appraisal District will forward the documents to the Open Records Division for review.

I have advised the requestor, Mr. Kirk, of this request by copy of this correspondence, without Exhibits B and C, and by separate letter attached as Exhibit D. Additionally, the affected property owners have been notified by separate letters attached as Exhibit E. Thank you for your consideration and direction.

Sincerely Yours,

/s/ Ryan L. James

Ryan James

cc: Douglas Kirk, dougkirk@fvtc.com
Rufino H. Lozano, Chief Appraisal, Comal Appraisal District, lozanr@co.comal.tx.us

From: Douglas Kirk [<mailto:dougkirk@gvtc.com>]
Sent: Friday, November 30, 2018 2:04 AM
To: Dow, Ryan <dowry@co.comal.tx.us>; Douglas Kirk <dougkirk@gvtc.com>
Subject: Open Records Request

Dear Mr. Ryan:

Pursuant to the Texas Public Information Act, please provide to me all readily accessible records as follows, relative to case numbers 2018-11021 Prop ID 414855, 2017-10933 Prop ID 414855, and 2016-9122 Prop ID 414855. Account #: 2010001189700, hearing before the Comal County Appraisal Review Board held on November 29, 2018.

1. All documents presented by the Comal Appraisal District (CAD) at the review hearing. (A photograph is a document.)
2. All documents, relative to these cases, that were present at the review hearing, whether presented or not.
3. All notes taken at the review hearing by any of the five CAD employees present at the review hearing.
4. Any document that reveals the names of the five CAD employees present at the review hearing.
5. Any audio recordings of the review hearing, whether official or unofficial (audio system or personal cell phone or recorder.)
6. All documents, whether at the review hearing or not, which were relied upon by the CAD to make its evaluation and/or its subsequent presentation to the Review Board.
7. Any other document related to these case numbers, whether it be photographic, hard copy, computer record, audio recording or any other form of record.
8. Any document signed by Douglas Kirk at this hearing or any other hearing before the Appraisal Review Board in the year 2018.
9. Copy of any state certification held by any and or all of the five CAD employees at the hearing.
10. Copy of any document that shows the names of the members of the Appraisal Review Board in the year 2018.
11. Copy of all Notices of Appraised Value sent to any owner of any fireworks business operating in Comal County in the years 2014, 2015, 2016, 2017 and 2018.
12. Copy of all property renderings to the Comal Appraisal District by any owner of any fireworks business operating in Comal County in the years 2014, 2015, 2016, 2017 and 2018.
13. Copy of any Appraisal Model used in the evaluation of personal property relative to the cases listed in Paragraph One.

In a nutshell, this request is seeking everything in the file relative to this case and/or this property and/or this hearing, and additional items.

Thank you very much.

Douglas Kirk

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ATTORNEYS AT LAW

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(512) 379-5800

rjames@lsejlaw.com
623 S. Baker Cir., Leander, TX 78641

December 12, 2018

Mr. W Fireworks Incorporated
Post Office Box 114
Somerset, Texas 78069

To Whom It May Concern:

The Comal Appraisal District has received a formal request to inspect or copy some of our files. A copy of the request for information is enclosed. The requested files include renditions we received from you or from your company. The Office of the Attorney General is reviewing this matter, and they will issue a decision on whether Texas law requires us to release your records. Generally, the Public Information Act (the "Act") requires the release of requested information, but there are exceptions. As described below, you have the right to object to the release of your records by submitting written arguments to the attorney general that one or more exceptions apply to your records. You are not required to submit arguments to the attorney general, but if you decide not to submit arguments, the Office of the Attorney General will presume that you have no interest in withholding your records from disclosure. In other words, if you fail to take timely action, the attorney general will more than likely rule that your records must be released to the public. If you decide to submit arguments, **you must do so not later than the tenth business day after the date you receive this notice.**

If you submit arguments to the attorney general, you must:

- a) identify the legal exceptions that apply,
- b) identify the specific parts of each document that are covered by each exception, and
- c) explain why each exception applies.

Gov't Code § 552.305(d). A claim that an exception applies without further explanation will not suffice. Attorney General Opinion H-436 (1974). You may contact this office to review the information at issue in order to make your arguments. We will provide the attorney general with a copy of the request for information and a copy of the requested information, along with other material required by the Act. The attorney general is generally required to issue a decision within 45 business days.

Please send your written comments to the Office of the Attorney General at the following address:

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

If you wish to submit your written comments electronically, you may only do so via the Office of the Attorney General's eFiling System. An administrative convenience charge will be assessed for use of the eFiling System. No other method of electronic submission is available. Please visit the attorney general's website at <http://www.texasattorneygeneral.gov> for more information.

In addition, you are required to provide the requestor with a copy of your communication to the Office of the Attorney General. Gov't Code § 552.305(e). You may redact the requestor's copy of your communication to the extent it contains the substance of the requested information. Gov't Code § 552.305(e).

Commonly Raised Exceptions

In order for a governmental body to withhold requested information, specific tests or factors for the applicability of a claimed exception must be met. Failure to meet these tests may result in the release of requested information. We have listed the most commonly claimed exceptions in the Government Code concerning proprietary information and the leading cases or decisions discussing them. This listing is not intended to limit any exceptions or statutes you may raise.

Section 552.101: Information Made Confidential by Law

Open Records Decision No. 652 (1997).

Section 552.104: Confidentiality of Information Relating to Competition

Boeing Co. v. Paxton, 466 S.W. 3d 831 (Tex. 2015).

Section 552.110: Confidentiality of Trade Secrets and Commercial or Financial Information

Trade Secrets:

In re Bass, 113 S.W.3d 735 (Tex. 2003).

Hyde Corp. v. Huffines, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958).

Open Records Decision No. 552 (1990).

Commercial or Financial Information:

Birnbaum v. Alliance of Am. Insurers, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. filed) (construing previous version of section 552.110), *abrogated by In re Bass*, 113 S.W.3d 735 (Tex. 2003).

Open Records Decision No. 639 (1996).

Open Records Decision No. 661 (1999).

Section 552.113: Confidentiality of Geological or Geophysical Information

Open Records Decision No. 627 (1994).

Section 552.131: Confidentiality of Certain Economic Development Negotiation Information

If you have questions about this notice or release of information under the Act, please refer to the *Public Information Handbook* published by the Office of the Attorney General, or contact the attorney general's Open Government Hotline at (512) 478-OPEN (6736) or toll-free at (877) 673-6839 (877-OPEN TEX). To access the *Public Information Handbook* or Attorney General Opinions, including those listed above, please visit the attorney general's website at <http://www.texasattorneygeneral.gov>.

Sincerely,

/s/ Ryan L. James

Ryan James

Enclosure

cc: Douglas Kirk, douglaskirk@gvtc.com (w/o enclosure);
Open Records Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas
78711-2548 (w/o enclosure)

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ATTORNEYS AT LAW

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623 S. Baker Cir., Leander, TX 78641

December 12, 2018

J.M. Girdley
Alamo Fireworks Megastore
Post Office Box 200710
San Antonio, TX 78220-0710

Dear Mr. Girdley:

The Comal Appraisal District has received a formal request to inspect or copy some of our files. A copy of the request for information is enclosed. The requested files include renditions we received from you or from your company. The Office of the Attorney General is reviewing this matter, and they will issue a decision on whether Texas law requires us to release your records. Generally, the Public Information Act (the “Act”) requires the release of requested information, but there are exceptions. As described below, you have the right to object to the release of your records by submitting written arguments to the attorney general that one or more exceptions apply to your records. You are not required to submit arguments to the attorney general, but if you decide not to submit arguments, the Office of the Attorney General will presume that you have no interest in withholding your records from disclosure. In other words, if you fail to take timely action, the attorney general will more than likely rule that your records must be released to the public. If you decide to submit arguments, **you must do so not later than the tenth business day after the date you receive this notice.**

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Open Records Division
P.O. Box 12548
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Sincerely,

/s/ Ryan L. James

Ryan James

Enclosure

cc: Douglas Kirk, douglaskirk@gvtc.com (w/o enclosure);
Open Records Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas
78711-2548 (w/o enclosure)