



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 29, 1997

Mr. Rick Perry  
Commissioner  
Texas Department of Agriculture  
P.O. Box 12847  
Austin, Texas 78711

OR97-1237

Dear Commissioner Perry:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 106108.

The Texas Department of Agriculture (the "department") received a request for "any cold germination test results" for certain varieties of cotton seed for Stoneville Pedigreed Seed Company ("Pedigreed") and Jacob Hartz Seed Co., Inc. ("Hartz"). You contend that the requested documents are not "public information" as defined by 552.022 of the Government Code. You further state that, although the department has no interest in withholding the requested information, its release may affect the privacy and property interests of third parties. You have submitted representative samples of the requested information for our review.<sup>1</sup>

Initially, we consider your assertion that the requested information is not "public information" as defined by section 552.022 because "service tests are outside the department's regulatory duties for seed testing." The threshold question is whether material that is requested from a governmental body falls within the act's definition of "public information." Gov't Code § 552.002. Section 552.002 of the Government Code defines public information and provides as follows:

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<sup>1</sup>In reaching our conclusion here, we assume that 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. We specifically note that the submitted sample documents do not appear to relate to either of the two companies the subject of this request, Pedigreed and Hartz.

(a) In this chapter, "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002. The records submitted to us for review were created "in connection with the transaction of official business," *i.e.*, in the course of providing seed testing as provided by Tex. Agric. Code Ann. § 61.002(c) and 4 T.A.C. § 19.4. Accordingly, we conclude that the information submitted to us for review is public information subject to the act.

Because the property and privacy rights of third parties may be implicated by the release of the requested information, this office notified Pedigreed and Hartz of this request. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). Of the two companies, only Pedigreed responded, claiming that the documents at issue are excepted from public disclosure by section 552.110 of the Government Code. As Hartz did not reply to our notice, we have no basis to conclude that Hartz's information is excepted from disclosure. *See* Open Records Decision Nos. 639 (1996) at 4 (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 (1990) at 5 (party must establish prima facie case that information is trade secret). The department must therefore release the requested information concerning Hartz.

Pedigreed did not submit to this office for review the documents it requests be withheld from disclosure by section 552.110. As provided by section 552.305, this office gave the company the opportunity to submit reasons as to why the information at issue should be withheld from disclosure and to identify the specific part or parts of the records that are within the exception Pedigreed raises. We note that a governmental body is required to provide this office only information that is responsive to the request for information. Gov't Code § 552.303. ("A governmental body that requests an attorney general decision under this subchapter shall supply to the attorney general, in accordance with Section 552.301, the specific information requested"). As the documents submitted to this office do not appear to be responsive to the request, this office is unable to determine whether any of the requested information is confidential, as Pedigreed asserts. We, therefore, have no basis to conclude that the requested information may be withheld.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

VDP/glg

Ref.: ID# 106108

Enclosures: Submitted documents

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