



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 23, 1998

Mr. Mel Davis
Assistant Executive
Texas State Soil and Water Conservation Board
P.O. Box 658
Temple, Texas 76503-0658

OR98-2289

Dear Mr. Davis:

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# 118191.

The Texas State Soil and Water Conservation Board (the "board") received an open records request for the following information:

1. All documents relating to the Tom J. Moore Cattle Company, including its application for a water quality management plan and any supporting documentation.
2. Any water quality management plan issued to the Tom J. Moore Cattle Company.
3. All documents relating to the standards or criteria used by [the board] or the local Soil and Water Conservation District in evaluating and/or issuing water quality management plans.

You indicate that information responsive to Item 3 will be made available to the requestor. You seek to withhold the remaining requested information pursuant to section 552.101 of the Government Code in conjunction with section 201.006 of the Agriculture Code.¹

¹The requestor also seeks these same categories of information from "the local Soil and Water Conservation District." Although you have submitted to this office at least one record that board previously obtained from the Brazos County Soil and Water Conservation District No. 450, the board is not required under the Open Records Act to obtain records not in its possession in response to an open records request. Open

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 201.006 of the Agriculture Code provides as follows:

(a) Except as provided by this section, information collected by the state board² or a conservation district³ is not subject to Chapter 552, Government Code, and may not be disclosed *if the information is collected in response to a specific request from a landowner or the landowner’s agent or tenant for technical assistance* relating to a water quality management plan or other conservation plan if the assistance is to be provided:

(1) under this code; and

(2) on private land that:

(A) is part of a conservation plan or water quality management plan developed cooperatively with the state board or conservation district; or

(B) is the subject of a report prepared by the state board or conservation district.

Agric. Code § 201.006 (footnotes and emphasis added). Having examined your arguments and the documents at issue, it is apparent that the documents at issue directly relate to a water quality management plan for private land of the Tom J. Moore Cattle Company. We generally agree that section 201.006(a) makes confidential the documents you submitted to this office, with the following exceptions.

We note that because section 201.006(a) makes confidential only information that “is collected in response to a specific request . . . for technical assistance,” the request for such assistance itself does not come within the scope of the confidentiality provision. Nor does this office believe that the guidelines entitled “Prescribed Grazing” and “Heavy Use Area Protection” come within the scope of the statute because these documents appear to have

Records Decision No. 445 (1986). Further, this ruling does not address whether any records held by the Brazos County Soil and Water Conservation District No. 450 are excepted from required public disclosure.

²The “state board” is defined as the State Soil and Water Conservation Board. Agric. Code § 201.002(7).

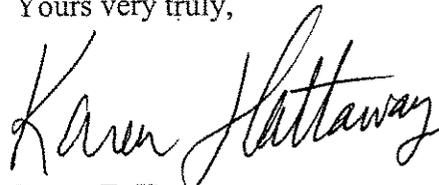
³A “conservation district” is defined as a soil and water conservation district. Agric. Code § 201.002(1).

been created prior to the board's receipt of the request for assistance. Because you have raised none of the act's other exceptions with regard to these documents, we conclude that they must be released.

We note that section 201.006(c) allows the state board or a conservation district to release information about land in a particular conservation plan, provided that the information is released in a manner that does not identify a particular tract of land, the owner of the tract, or the owner's agent or tenant. Agric. Code § 201.006(c). Here, the requestor has asked for information about a particular company. Thus, the board is not able to release information in the de-identified form required by section 201.006(c). We note also that none of the release provisions in section 201.006 are applicable to this situation. Agric. Code § 201.006(b), (e)-(g). For these reasons, we find that the board must withhold the submitted documents from disclosure pursuant to section 201.006(a) of the Agriculture Code in conjunction with section 552.101 of the Government Code, except as noted above.

Finally, you ask whether the board may withhold other water quality management plans pursuant to this ruling if the board receives open records requests for such documents in the future. We decline to issue a previous determination for water quality management plans at this time. Instead, we are resolving this matter with an informal letter ruling. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/mjc

Ref.: ID # 118191

Enclosures: Submitted documents

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(w/o enclosures)