



June 17, 1999

Mr. Boyd Kennedy  
Staff Attorney  
Texas Parks & Wildlife  
4200 Smith School Road  
Austin, Texas 78744-3291

OR99-1680

Dear Mr. Kennedy:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 124988.

The Texas Department of Parks and Wildlife (the "department") received an open records request for "all documents, reports, letters, written communications, written or electronically recorded statements of [a former department employee] and all agents, investigators and witnesses contained in [the department's] investigation file and the investigation file of [the department's] Internal Affairs division." You state that some responsive information will be made available to the requestor. You seek to withhold, however, certain other records pursuant to sections 552.101, 552.103, and 552.108 of the Government Code.

We note at the outset that because the envelope carrying your request does not bear a United States Postal Service postmark, we assume that your request to this office was delivered via interagency mail. Section 552.308 of the Government Code is the only provision in the act that addresses the timeliness of submissions to this office. This provision, which establishes a "mailbox rule" for determining when a request has been timely submitted, provides as follows:

**When this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period, the requirement is met in a timely fashion if the document is sent to the**

person by first class United States mail properly addressed with postage prepaid and:

(1) it bears a post office cancellation mark indicating a time within the period; or

(2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail within the period.

Section 552.308 refers only to mail sent by first class United States mail. Therefore, we do not believe section 552.308 applies to mail sent by interagency mail.<sup>1</sup> Since the act does not provide a comparable "mailbox rule" for requests submitted by means other than U.S. mail, such requests are considered to be timely made only upon receipt by the Office of the Attorney General. This interpretation has been the consistent opinion of this office.

As stated above, the department's request was not sent by first class United States mail, but rather by interagency mail. Therefore, the timeliness of this request is governed by section 552.301 of the Government Code and not section 552.308. The department received the open records request on March 9, 1999. Although your request for an open records decision from this office is dated March 19, 1999, this office did not receive your request until March 24, 1999. We therefore conclude that you failed to request a decision within the ten business days required by section 552.301(a) of the Government Code.

Section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within those ten days, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See Hancock*, at 381.

You have not shown compelling reasons why the information at issue should be withheld pursuant to either section 552.103 or 552.108 of the Government Code. We therefore conclude that, except for the categories of information discussed below, the requested information must be released in its entirety.

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<sup>1</sup>We note that legislation pending before the governor would amend section 552.308 to provide that a ruling request submitted by interagency mail is considered to be timely upon its deposit in interagency mail. *See S.B. 1851, §26 (engrossed version)*

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” A demonstration that the information is confidential by law overcomes the resulting presumption of openness. Open Records Decision No. 150 (1977); *see also* Gov’t Code § 552.352 (distribution of confidential information is criminal offense). Consequently, we will consider your section 552.101 claims.

Section 31.0391(a) of the Parks and Wildlife Code provides as follows:

The department or a county may not release the name or address of a person recorded in the department vessel and outboard motor ownership records unless the department or county receives a written request that:

- (1) contains the requestor’s name and address; and
- (2) states that the use of the information is for a lawful purpose.

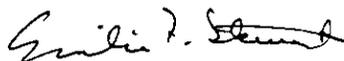
We agree with your contention that the current open records request does not comply with the requirements of section 31.0391(a). On the other hand, this section only restricts the release of “the name or address of a person recorded in the department vessel and outboard motor ownership records.” Consequently, the department must withhold only the name and address information pursuant to this section. All remaining information contained in the ownership records must be released. *See also* Parks & Wildlife Code § 31.039 (“All ownership records of the department made or kept under [chapter 31] are public records.”).

We also note that some of the records at issue reveal the home address and telephone number of certain department employees. Section 552.117(1) of the Government Code requires that the department withhold, among other things, the home address and home telephone number of current or former officials or employees who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). To the extent that the department employees made the election prior to the date on which the department received the open records request, the department must withhold these categories of information pursuant to section 552.117(1). Otherwise, these types of information must be released.

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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Emilie F. Stewart". The signature is fluid and cursive, with a prominent initial "E".

Emilie F. Stewart  
Assistant Attorney General  
Open Records Division

EFS/RWP/eaf

Ref.: ID# 124988

Encl: Submitted documents

cc: Mr. Christopher L. Smith  
111 S. Garland Avenue, 5<sup>th</sup> Floor  
Garland, Texas 75040  
(w/o enclosures)