



December 17, 1999

Ms. Judy Doran  
Open Records Coordinator  
Texas Parks & Wildlife  
4200 Smith School Road  
Austin, Texas 78744-3291

OR99-3663

Dear Ms. Doran:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129894.

The Texas Parks and Wildlife Department (TPWD) received a request for information regarding a variety of TPWD programs, reports, communications, and records. You request a determination by this office as to the confidentiality of items 1 and 3 of the list of requested information. Because you have objected to those items only, we assume that you have released the remaining requested information. You claim that item 1 includes a request for information excepted from disclosure under section 552.107 of the Government Code, and that item 3 includes information made confidential by federal law. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.107 excepts information if:

- (1) it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence . . . .

You claim that the documents you have submitted as Exhibits B and C are excepted from disclosure because they contain confidential attorney-client information. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5.

When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* The documents at issue in your Exhibits B and C contain client confidences

and attorney advice or opinion. They also contain factual information. We have marked the information which you may withhold under section 552.107. As Exhibit C contains only client confidences and attorney advice, it may be withheld in its entirety. The information remaining in Exhibit B must be released.

You claim that Exhibits E and F contain representative samples of the "working papers" of the Defense Contract Audit Agency (DCAA).<sup>1</sup> Exhibit E consists of a series of communications between a DCAA auditor and a TPWD official. Exhibit F is a request by DCAA for TPWD documents and a monthly audit status report. We note first that "'public information' means information that is collected, assembled, or maintained . . . in connection with the transaction of official business . . . by a governmental body" or "for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002. Information in the possession of TPWD, produced by TPWD for the audit, or produced by DCAA for TPWD is "public information." Exhibits E and F were produced either by or for TPWD, and TPWD obviously owns or has a right of access to them. You argue that the audit papers are confidential while the audit is ongoing, citing 31 U.S.C. § 7503 for authority to conduct the audit and the federal Freedom of Information Act provision, 5 U.S.C. § 552(b)(5), for confidentiality. The fact that information held by a federal agency is excepted by the Freedom of Information Act does not necessarily mean that the same information is excepted under the Public Information Act when held by a Texas agency. ORD 124 (1976); *see also* ORD 59 (1975). Neither the Freedom of Information Act nor the federal privacy act of 1974 applies to records held by a state or local governmental body in Texas. MW-95 (1979). Having examined the provisions and legal authorities you cite, we find no basis for your claim that the audit papers are confidential.<sup>2</sup> As you raise no applicable exception to the presumption of openness, those documents must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

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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.

<sup>2</sup> Documents in the custody and control of DCAA or the Department of the Interior are subject to a federal Freedom of Information Act request, which may be directed to:

Sandra Evans  
Office of the Inspector General  
Department of the Interior  
1849 C Street, Mail Stop 5341  
Washington, DC 20249.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.– Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/jc

Ref: ID# 129894

Encl. Submitted documents

cc: Mr. Mike Leggett  
Austin American-Statesman  
305 South Congress Avenue  
Austin, Texas 78704  
(w/o enclosures)