



April 18, 2000

Mr. Mel Davis
Director of District Operations
Texas State Soil and Water Conservation Board
P.O. Box 658
Temple, Texas 76503-0658

OR2000-1538

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134962.

The State Soil and Water Conservation Board (the "board") received a written request for "the names and acreage of participants in the North Concho Watershed Brush Control Program" (the "program"). You contend that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 201.006 of the Agriculture Code.

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 board¹ or a conservation district² 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:

¹The "state board" is defined as the State Soil and Water Conservation Board. Agric. Code § 201.002(7).

²A "conservation district" is defined as a soil and water conservation district. Agric. Code § 201.002(1).

- (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). Section 201.006(b) further provides that the board may disclose information regarding a tract of land covered by a conservation or water quality management plan to 1) the owner of the land, or the owner's agent or tenant, or 2) any other individual with the written consent of the owner or the owner's agent or tenant.

You explain that

the North Concho River Watershed consists of approximately 950,000 acres located within Tom Green, Sterling, Glasscock and Coke Counties in West Central Texas. Much of the watershed is infested with brush which is believed to be a significant factor contributing to the decrease in stream flow recorded from 1960 through 1996. Studies have shown that mesquite and juniper on the North Concho Watershed use 100 times more water than the City of San Angelo uses annually. The purpose of [the program] administered under the State Board is to assist private landowners with the removal of mesquite and juniper to restore underground aquifers and natural stream flow for offsite public benefit.

Having examined your arguments and the information at issue, it is apparent that the requested information directly relates to a water quality management plan for private land. Furthermore, you inform us that the board possesses no written consent from any owner, agent, or tenant that would allow either full disclosure or specific partial disclosure of the requested information.

We note, however, that section 201.006(c) of the Agriculture Code authorizes the board 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. The information you have submitted to this

office as responsive to the request lists the following information for each applicant: identification number, name, estimated number of acres covered by the program, the number of acres for which funds have been paid to date, and the resulting balance. The information at issue does not reveal the location of the acreages covered by the program. We conclude that the board must withhold pursuant to section 201.006(a) each applicant's identification number and name.³ The board must release the remaining information.

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.

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).

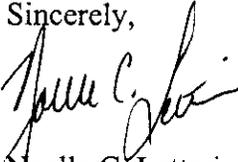
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

³We note also that none of the remaining release provisions in section 201.006 appear to be applicable in this instance. Agric. Code § 201.006(b), (e)-(g).

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,



Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/RWP/nc

Ref: ID# 134962

Encl. Submitted documents

cc: Mr. Perry L. Curnutt
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(w/o enclosures)