Office of the Attorney General · State of Texas
John Cornyn

January 2, 2001

Ms. Janice Mullenix
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR2000-4963

Dear Ms. Mullenix:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 142803.

The Texas Department of Transportation (the "department") received a request for a copy of the environmental assessment and the archeological survey pertaining to the proposed expansion of Highway 83, specifically as the proposal would effect the area between the City of Laredo and the Webb County line. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 191.004 of the Natural Resources Code states:

> (a) Information specifying the location of any site or item declared to be a state archeological landmark under Subchapter D of this Chapter is not public information.
>
> (b) Information specifying the location or nature of an activity covered by a permit or an application under this chapter is not public information.
>
> (c) Information specifying details of a survey to locate state archeological landmarks under this chapter is not public information.

You state the requested information may fall under section 191.004 of the Natural Resources Code and therefore may be excepted from public disclosure under section 552.101 of the Government Code. The requested information indicates that both an environmental assessment (the "assessment") and an archeological resources survey report (the "survey") were prepared by the department. Both contain information regarding a survey of the proposed highway expansion area conducted by one of the department's archeologists. The Texas Historical Commission has supplied a letter to this office stating that it believes release of the requested information "may result in unauthorized access and potential damage to archeological sites that are eligible for formal designation as State Archeological Landmarks." Based on these arguments and our review of the documents, we agree that the documents contain the details of a survey to locate state archeological landmarks and that such details are confidential under section 191.004 of the Natural Resources Code. We have marked the information that must be withheld under section 552.101 of the Government Code in conjunction with section 191.004. The remainder of the information is not confidential and 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.

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).

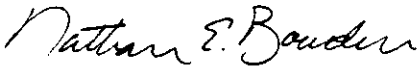
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB\er

Ref: ID# 142803

Encl: Submitted documents

cc: Ms. Anita L. Guerra
Webb County Courthouse
1000 Houston Street
Laredo, Texas 78040
(w/o enclosures)