



June 28, 2002

Ms. Beverly Luna
Staff Attorney
Texas Water Development Board
P.O. Box 13231
Austin, Texas 78711-3231

OR2002-3528

Dear Ms. Luna:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165073.

The Texas Water Development Board (the "board") received a request for copies of "historical water use (by year) information for Southwestern Electric Power Company's Pirkey Power Plant." You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. Although you do not take any other position with respect to the release of the requested information, you claim that the information may be excepted from disclosure pursuant to section 552.110 of the Government Code. Pursuant to section 552.305(d) of the Government Code, the board notified an interested third party, namely Henry W. Pirkey Power Plant ("Pirkey Power Plant"), of the board's receipt of the request and of its right to submit arguments to this office as to why the requested information should not be released. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances).* We have considered the exception you claim and have reviewed the submitted representative sample document.¹

¹ 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.

You claim that the requested information is excepted from disclosure pursuant to section 552.101 in conjunction with section 16.012(m) of the Water Code.² Section 16.012(m) provides:

The executive administrator may conduct surveys of entities using groundwater and surface water at intervals determined appropriate by the executive administrator to gather data to be used for long-term water supply planning. Recipients of the survey shall complete and return the survey to the executive administrator. A person who fails to timely complete and return the survey is not eligible for funding from the board for board programs and is ineligible to obtain permits, permit amendments, or permit renewals from the commission under Chapter 11. A person who fails to complete and return the survey commits an offense that is punishable as a Class C misdemeanor. Surveys obtained by the board from nongovernmental entities are excepted from the requirements of Section 552.021, Government Code, unless otherwise directed in writing by the person completing the survey. This subsection does not apply to survey information regarding windmills used for domestic and livestock use.

Water Code § 16.012(m).

You state that the Pirkey Power Plant is a nongovernmental entity and indicate that the survey information at issue was obtained by the board from that entity. It does not appear from your representations or our review of the submitted information that the individual who completed the survey information directed in writing that the information could be released to the general public. Therefore, we agree that any surveys obtained by the board from the Pirkey Power Plant pursuant to section 16.012(m) are excepted from the requirements of the Public Information Act. Furthermore, we conclude that section 16.012(m) applies not only to surveys obtained by the board from Pirkey Power Plant subsequent to the effective date of section 16.012(m), but also to any surveys obtained by the board from Pirkey Power Plant prior to September 1, 2001. We note that the law which added subsection (m) to section 16.012 does not limit the applicability of the provision to only those surveys that were conducted after the effective date of the law. *See* Act of May 27, 2001, 77th Leg., R.S., ch. 966, § 2.15, 2001 Tex. Gen. Laws 1999 (providing that effective date of Act is September 1, 2001). Accordingly, we conclude that the board must withhold the requested information from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 16.012(m) of the Water Code. Because we base our ruling on section 552.101, we need not address whether any of the requested information is excepted from disclosure pursuant to section 552.110 of the Government Code.

² Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

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).

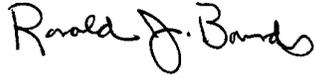
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. 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,

A handwritten signature in cursive script that reads "Ronald J. Bounds".

Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 165073

Enc. Submitted documents

cc: Mr. Henry Bradbury
3918 Bobbin Lane
Addison, Texas 75001
(w/o enclosures)