OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

August 12, 2002

Mr. Jason Martinson
Open Records Coordinator
Texas Parks & Wildlife
4200 Smith School Road
Austin, Texas 78744-3291

OR2002-4418

Dear Mr. Martinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167003.

The Texas Parks and Wildlife Department (the "department") received a request for "[a]ll records of any nature related to the fishing and hunting regulations publishing agreement between [the department] and Texas Monthly for the years 2000, 2001 and 2002 year to date." You state that you have released all of the requested information other than the three submitted attachments, which you claim are excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the document that you have submitted as Attachment E was created after the date of the department's receipt of this request for information. Chapter 552 of the Government Code is not applicable to information that did not exist when this request for information was received. *See* Open Records Decision No. 555 at 1 (1990). As Attachment E is not subject to this request, we do not address it in this ruling.

Section 552.107(1) excepts from disclosure information that an attorney cannot disclose because of a duty to his client. 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. Open Records Decision No. 574 at 5 (1990). You

indicate that Attachments C and D are communications between department staff and attorneys representing the department. Based on your arguments and our review of the submitted information, we agree that Attachments C and D consist of confidential communications from a client to an attorney and the attorney's legal advice or opinions. Accordingly, Attachments C and D may be withheld from public disclosure pursuant to section 552.107(1) of the Government Code. As our ruling on this issue is dispositive, we need not address your arguments regarding sections 552.103 and 552.111.

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).

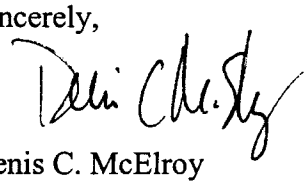
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 167003

Enc. Submitted documents

c: Mr. Jim Haire
5801 Regents Row
Tyler, Texas 75703
(w/o enclosures)