



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

April 17, 2003

Mr. Martin A. Hubert
Deputy Commissioner
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR2003-2637

Dear Mr. Hubert:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179569.

The Texas Department of Agriculture (the "TDA") received a request for "the same information that was released to the Associated Press on or about April 2000" concerning a loan guaranty made by the Texas Agriculture Finance Authority ("TAFA") that involved Permian Sea Shrimp and Seafood, Ltd. ("Permian Sea") and the First National Bank of Monahans ("FNB"). You inform us the TDA will release the loan summary in accordance with Open Records Letter No. 2000-2445 (2002), a previous decision issued by this office that pertains to precisely the same requested information. However, you request clarification from this office regarding the TDA's obligation to release Attachments A through H in light of Open Records Letter No. 2000-2445, which deemed this information confidential under section 552.110 of the Government Code. Further, with respect to the requested information at issue in Open Records Letter No. 2000-2445, you explain Permian Sea previously asserted sections 552.101, 552.104, and 552.110 of the Government Code. We have reviewed the information you submitted and we have considered the issues you have raised.

Based on your letter to this office, we find the TDA has met three of the criteria for a "previous determination" established by this office in Open Records Decision No. 673

(2001).¹ You provide no indication as to whether the facts and circumstances on which this office based its prior ruling remain the same. *See* Open Records Decision No. 673. Therefore, if the facts and circumstances have not changed since the issuance of Open Records Letter No. 2000-2445 in that Permian Sea still wants to withhold its proprietary information, then the TDA must withhold Attachments A through H in accordance with this previous decision.

However, if the facts and circumstances have changed and Permian Sea no longer wishes to withhold its information, then the TDA must release the submitted information. As of the date of this letter, Permian Sea has not submitted to this office its comments regarding release of its information. *See* Gov't Code § 552.305(d)(2)(B).

Lastly, we address the requestor's contention that because the TDA previously released the requested information to the Associated Press, "the information is in the Public Domain and no longer private." Government Code section 552.007 prohibits the selective disclosure of information. Gov't Code § 552.007(b). As a general rule, if a governmental body releases information to one member of the public, the Public Information Act's exceptions to disclosure are waived unless the information is deemed confidential under the Public Information Act (the "Act"). Open Records Decision Nos. 490 (1988), 400 (1983). Although protection for information protected by the Act's permissive exceptions can be waived, protection for information deemed confidential by law ordinarily is not waived through "selective disclosure." *See* Open Records Decision Nos. 490, 400. Here, because the TDA previously released Permian Sea's information to the Associated Press without asking for an attorney general decision and without affording Permian Sea an opportunity to raise exceptions to disclosure, the previous release did not serve to waive any of Permian Sea's arguments for withholding the requested information, which this office addressed in Open Records Letter No. 2000-2445.

In summary, if the facts and circumstances at issue in Open Records Letter No. 2000-2445 have not changed, then the TDA must withhold Attachments A through H. However, if the facts and circumstances have changed, then the TDA must release Attachments A through H to the requestor because the TDA asserts no exceptions to disclosure and we have not received comments from Permian Sea objecting to disclosure as permitted by section 552.305(d) of the Government Code.

¹ The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

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 Dep't of Pub. 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 black ink that reads "Christen Sorrell". The signature is written in a cursive, flowing style.

Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 179569

Enc: Submitted documents

c: Mr. Jack R. Stern
Attorney at Law
310 North Main
Del Rio, Texas 78840
(w/o enclosures)