



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2003

Mr. Michael Wied
Staff Attorney
Texas Water Development Board
P.O. Box 13231
Austin, Texas 78711-3231

OR2003-8095

Dear Mr. Wied:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190743.

The Texas Water Development Board (the "board") received a request for "documents or records reflecting Maxwell Water Supply Corporation's Survey of Ground and Surface Water Use for calendar years ending 1972 to current." You indicate that the board does not hold or have access to some of the requested information.¹ You ask whether responsive survey information held by the board is made confidential by law under section 552.101 of the Government Code. We have considered your arguments and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that is made confidential by another statute. In this instance, the relevant statute is section 16.012 of the Water Code. As recently amended by the Seventy-eighth Legislature, section 16.012(m) provides as follows:

(m) The executive administrator [of the board] may conduct surveys of entities using groundwater and surface water for municipal, industrial, power generation, or mining purposes at intervals determined appropriate by the executive administrator to gather data to be used for long-term water supply

¹We note that chapter 552 of the Government Code does not require the board to release information that did not exist when it received this request or to create responsive information. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

planning. Recipients of the survey shall complete and return the survey to the executive administrator. A person who fails to timely complete and return this 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 [Texas C]ommission [on Environmental Quality] under chapter 11 [of the Water Code]. A person who fails to complete and return the survey commits an offense that is punishable as a Class C misdemeanor. This subsection does not apply to survey information regarding windmills used for domestic and livestock use.

Act of May 30, 2003, 78th Leg., R.S., ch. 1057, § 3, 2003 Tex. Sess. Laws 3044, 3047 (to be codified as Water Code § 16.012(m)). You inform us that the survey forms at issue here were submitted to the board by a non-governmental entity. We note, however, that the recent amendment of section 16.012(m) eliminated the statutory language that previously excepted surveys obtained by the board from non-governmental entities from public disclosure. *See* Act of 2001, 77th Leg., R.S. ch. 966, § 2.15, 2001 Tex. Gen. Laws 1991, 1999 (amending Water Code § 16.012 to add subsections (l) and (m)). Thus, section 16.012(m) no longer excepts surveys obtained by the board from non-governmental entities from the requirements of section 552.021 of the Government Code. Accordingly, we conclude that the submitted survey forms are not confidential under 16.012(m) of the Water Code. *See also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public). Therefore, the submitted information is not excepted from disclosure under section 552.101 of the Government Code and must be released to the requestor in its entirety.

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

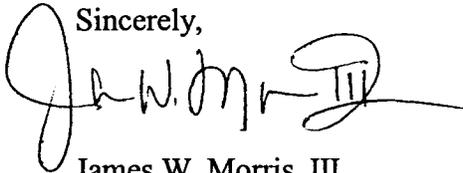
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 190743

Enc: Submitted documents

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(w/o enclosures)