



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 24, 2004

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

OR2004-1349

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# 196624.

The Texas Parks and Wildlife Department (the "department") received a request for a variety of information pertaining to certain "permit holders." You state that the department will provide the requestor with some responsive information. You claim, however, that portions of the remaining requested information are excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample documents.¹

You claim that portions of the submitted information are governed by section 11.030 of the Parks and Wildlife Code. Section 11.030 provides in pertinent part:

(a) The name and address and a telephone, social security, driver's license, bank account, credit card, or charge card number of a person who purchases customer products, licenses, or services from the department may not be disclosed except as authorized under this section or Section 12.0251.

(b) Chapter 552, Government Code, does not apply to customer information described by Subsection (a).

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.

(c) The commission by rule shall adopt policies relating to:

- (1) the release of the customer information;
- (2) the use of the customer information by the department;
and
- (3) the sale of a mailing list consisting of the names and addresses of persons who purchase customer products, licenses, or services.

Parks & Wild. Code § 11.030(a), (b), (c). Section 12.0251 concerns the disclosure of information collected by the department in response to a private landowner request relating to the specific location, species identification, or quantity of certain animal or plant life. *See* Parks & Wild. Code § 12.0251.

Based on our review of your arguments and the submitted information, we find that the information that you have highlighted constitutes customer information that is governed by section 11.030. We have marked some additional information within the submitted documents that also constitutes such customer information under section 11.030 of the Parks and Wildlife Code. We note that section 12.0251 of the Parks and Wildlife Code does not apply to any portion of the information in question. Because subsection (b) of section 11.030 specifically excludes “customer information” from the provisions of chapter 552 of the Government Code, the Public Information Act (the “Act”) does not govern the release of this information.² However, we note that section 11.030(c)(1) requires that the Parks and Wildlife Commission “by rule shall adopt policies relating to . . . the release of the customer information.” Parks & Wild. Code § 11.030(c)(1). Accordingly, we conclude that the department must adhere to the policies adopted by the Parks and Wildlife Commission in determining the extent to which the highlighted and otherwise marked “customer information” may be released to the requestor. However, we also conclude that section 11.030 is not applicable to any portion of the remaining submitted information, and it may not be withheld from the requestor on that basis.

You also raise chapter 730 of the Transportation Code. Section 730.004 prohibits the release of “personal information” about any person obtained in connection with a motor vehicle record by an agency that maintains or compiles motor vehicle records, except under certain circumstances not present here. Transp. Code § 730.004. “Personal information” is defined as including an individual’s social security number, driver identification number, name, address, and telephone number. *See id* § 730.003(6). Because we find that this “personal information” is encompassed by section 11.030 of the Parks and Wildlife Code, we conclude

²As section 11.030 of the Parks and Wildlife Code specifically excludes “customer information” from the provisions of chapter 552 of the Government Code, we do not address your claim that section 552.101 of the Government Code excepts this information from disclosure in conjunction with section 11.030.

that chapter 730 of the Transportation Code is not applicable to any portion of the remaining submitted information, and it may not be withheld from the requestor on that basis.

In summary, the information that the department has highlighted, as well as the additional information that we have marked, is subject to release only pursuant to the policies adopted by the Parks and Wildlife Commission under section 11.030 of the Parks and Wildlife Code. The department must release the remaining submitted information to the requestor.

You also request that this office issue a previous determination allowing the department to withhold customer information pertaining to department permit holders maintained by the department under section 11.030 of the Parks and Wildlife Code. After due consideration, we have decided to grant your request. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) for such information. *See* Gov't Code § 552.301(a), (f); *see also* Open Records Decision No. 673 (2001). This previous determination allows the department to withhold only the name, address, telephone, social security, driver's license, bank account, credit card, or charge card number of a person who purchases customer products, licenses, or services from the department, except where disclosure is authorized by section 11.030 or section 12.0251 of the Parks and Wildlife Code. Moreover, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the department need not ask for a decision from this office again with respect to this particular type of information requested of the department under Chapter 552 of the Government Code. *See id.*

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 196624

Enc. Marked documents

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(w/o enclosures)