



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 28, 2006

Mr. Jason Martinson  
Staff Attorney  
Texas Parks and Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744-3291

OR2006-09960

Dear Mr. Martinson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 257825.

The Texas Parks and Wildlife Department (the "department") received a request for information relating to the Lesser Prairie Chicken. You state that the department is releasing some of the requested information. You claim that other responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.<sup>1</sup>

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. The department raises section 552.101 in conjunction with section 12.0251 of the Parks and Wildlife Code. Section 12.0251 provides in part:

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<sup>1</sup>This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

(a) Except as provided by this section, information is not subject to Chapter 552, Government Code, and may not be disclosed to any person, including a state or federal agency, if the information is collected by the department in response to a landowner request relating to the specific location, species identification, or quantity of any animal or plant life that is:

(1) protected by this code; and

(2) located on private land that:

(A) is subject to a wildlife management plan developed cooperatively with the department for private land; or

(B) is the subject of a recommendation report prepared by the department for the landowner.

(b) The [Parks and Wildlife C]ommission or the department may disclose information described by this section only to the landowner unless:

(1) the landowner consents to full or specified partial disclosure of information; and

(2) the consent is in writing and attached to the plan or recommendation report.

(c) The department may release game census, harvest, habitat, or program information only if the information is summarized in a manner that prevents the identification of an individual or specific parcel of land and the landowner.

(d) The department may prepare not more than one original record of the information collected by the department and incorporated into a wildlife management plan, and the record becomes the property of the landowner. The department may retain one copy of the record. The retained copy may not be disclosed except as provided by this section.

(e) Except as provided by this subsection, the department shall send a copy of the information retained by the department relating to a landowner's property to the landowner and destroy the department's record of the information if the protected information status assigned by this section is revoked. The department may retain a copy of the information if the landowner consents in writing.

Parks & Wild. Code § 12.0251(a)-(e). You state that the submitted information includes documents that reflect information gathered by personnel of the department in the course of providing technical assistance to private landowners. You also state that these documents concern the Lesser Prairie Chicken.<sup>2</sup> You inform us that the landowners to whom these documents pertain have not consented to their public disclosure. Based on your representations and our review of the submitted information, we conclude that the department must withhold two of the submitted documents in their entirety under section 552.101 of the Government Code in conjunction with section 12.0251 of the Parks and Wildlife Code. We have marked that information accordingly.

You also raise section 552.101 in conjunction with section 12.103 of the Parks and Wildlife Code, which provides in part:

(a) To enforce the game and fish laws of the state and to conduct scientific investigations and research regarding wild game or fish, an authorized employee of the department may enter on any land or water where wild game or fish are known to range or stray.[]

(b) Except as provided by Subsection (d), the department may use information collected by an employee of the department on privately owned land only for the purposes of scientific investigations and research described in Subsection (a) and only if authorized in writing by the landowner or the landowner's agent.[]

...

(c) Except as provided by Subsection (d), information collected under this section may only be reported or compiled in a manner that prevents the identification of an individual parcel or specific parcels of private property without the written consent of the landowner or the landowner's agent.

(d) The department may collect and enter data as necessary relating to the occurrence or harvest of natural resources in public land or water. The department may collect and report standardized annual wildlife survey information required by the Pitman-Robertson Wildlife Restoration Act (16 U.S.C. Section 669 *et seq.*).

*Id.* § 12.103. You state that the rest of the submitted information was collected during the course of scientific investigations and research on privately owned land. Based on your representations and our review of the remaining information, we find that it falls within the

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<sup>2</sup>You state that the Lesser Prairie Chicken is considered a game bird governed by chapter 64 of the Parks and Wildlife Code. *See id.* § 64.001 (listing types of game birds).

scope of section 12.103. Because section 12.103(b) prohibits the department from making use of such information for any purpose other than those listed in the statute, we conclude that the remaining information is confidential under section 12.103. You inform us that there has been no landowner authorization to disclose this information. Thus, none of the release provisions in section 12.103 appear to be applicable in this instance. Therefore, the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 12.103 of the Parks and Wildlife Code.

In summary, the department must withhold all of the submitted information under section 552.101 of the Government Code in conjunction with sections 12.0251 and 12.103 of the Parks and Wildlife Code.

You also ask this office to issue a previous determination that would permit the department to withhold information contained in wildlife management plans without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.101. We decline to issue such a decision at this time. 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

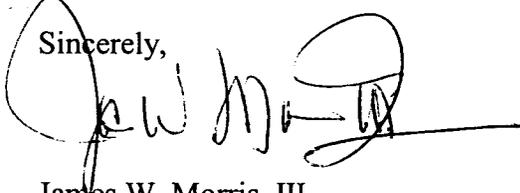
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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 Office of the Attorney General 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. 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, appearing to read 'J W Morris III', with a long horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 257825

Enc: Submitted documents

c: Mr. Jeremy T. Rohrlich  
c/o Mr. Jason Martinson  
Texas Parks and Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744-3291  
(w/o enclosures)