



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2007

Mr. John Foster
Inter-Agency Communications
Texas State Soil & Water Conservation Board
P. O. Box 658
Temple, Texas 76503-0658

OR2007-00556

Dear Mr. Foster:

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# 269230.

The Texas State Soil and Water Conservation Board (the "board") received a request for information pertaining to two specified properties. You state that the board does not maintain some of the requested information.¹ You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. In addition, you note that release of the submitted information may implicate the proprietary interests of the owners of the properties at issue. Pursuant to section 552.305(d) of the Government Code, you have notified each landowner of the request and of his or her opportunity to submit comments to this office. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability

¹We note that it is implicit in several provisions of the Act that the Act applies only to information already in existence. See Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. See *Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); see also Attorney General Opinion H-90 (1973); Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975).

of exception to disclosure in certain circumstances). We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from either landowner explaining why the requested information should not be released. We thus have no basis for concluding that any portion of the requested information constitutes proprietary information protected under section 552.110, and none of it may be withheld on that basis. *See* Gov't Code § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 201.006 of the Agriculture Code provides in part:

(a) Except as provided by this section, information collected by the state board² or a conservation district³ is not subject to Chapter 552, Government Code, and may not be disclosed if the information is collected in response to a specific request from a landowner or the landowner's agent or tenant for technical assistance relating to a water quality management plan or other conservation plan if the assistance is to be provided:

(1) under this code; and

(2) on private land that:

(A) is part of a conservation plan or water quality management plan developed cooperatively with the state board or conservation district; or

²The "state board" is defined as the State Soil and Water Conservation Board. Agric. Code § 201.002(7).

³A "conservation district" is defined as a soil and water conservation district. Agric. Code § 201.002(1).

(B) is the subject of a report prepared by the state board or conservation district.

Agric. Code § 201.006(a) (footnotes added). Section 201.006(b), (e), (f), and (g) provide that information may be released to certain parties, but it is our understanding that none of these qualified release provisions are applicable in this request.

You state that the submitted information was “collected and compiled in response to individual requests from [the property owners] for technical assistance relating to a Water Quality Management Plan on their private land and that the assistance from [the board] was provided under Section 201, Agricultural Code.” Based upon your representations and our review, we agree that the records at issue must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 201.006 of the Agriculture Code.⁴

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

⁴We note that section 201.006(c) provides that the state board or conservation district has the option of disclosing “in a manner that prevents the identification of a particular tract of land, the owner of the tract, or the owner’s agent or tenant, a summary of information collected by the state board or conservation district” concerning certain types of information. Agric. Code § 201.006(c).

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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/dh

Ref: ID# 269230

Enc. Submitted documents

c: Mr. Kenneth W. Swick
P.O. Box 276
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(w/o enclosures)