



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 27, 2008

Mr. Mel Davis  
Special Projects Coordinator  
Texas State Soil & Water Conservation Board  
P. O. Box 658  
Temple, Texas 76503-0658

OR2008-04043

Dear Mr. Davis:

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# 307337.

The Texas State Soil and Water Conservation Board (the "board") received two requests from the same requestor for information related to three poultry operations. You state that the board does not maintain some of the requested information.<sup>1</sup> You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you inform us that a portion of the requested information is subject to a previous ruling issued by this office. On January 18, 2007, this office issued Open Records Letter No. 2007-00556 (2007), in which we ruled that the submitted information was excepted from public disclosure under section 552.101 of the Government Code. We have no indication that the pertinent facts and circumstances have changed since the issuance of that prior ruling. Thus we determine that the board may continue to rely on our ruling in Open Records Letter No. 2007-00556 as a previous determination and must withhold the information at issue under section 552.101 in accordance with that decision. *See* Open

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Records Decision No. 673 (2001) (governmental body may rely on previous determination when 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); the governmental body which received the request for the records or information is the same governmental body that previously requested or received a ruling from the attorney general; the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling).

Next, we address your claim under section 552.101 of the Government Code for the information not subject to the previous determination. Section 552.101 excepts 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 board<sup>2</sup> or a conservation district<sup>3</sup> 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

(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 provides that information may be released to certain parties, but it is our understanding that none of the qualified release provisions are applicable in this request. *See id.* § 201.006(b), (e), (f), (g).

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

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

You state that the submitted information was “collected and compiled in response to” individual requests from property owners for technical assistance relating to a Water Quality Management Plan on 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.<sup>4</sup>

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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).

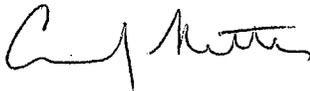
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<sup>4</sup>We note that section 201.006(c) provides that the state board or conservation district has the option of disclosing “in a manner that prevents the identification of a particular tract of land, the owner of the tract, or the owner’s agent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

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/mcf

Ref: ID# 307337

Enc. Submitted documents

c: Mr. Kenneth W. Swick  
P.O. Box 276  
Bremond, Texas 76629  
(w/o enclosures)