



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 4, 2015

Mr. Mark Wolfe
Executive Director
Texas Historical Commission
P.O. Box 12276
Austin, Texas 78711-2276

OR2015-15947

Dear Mr. Wolfe:

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# 574123.

The Texas Historical Commission (the "commission") received a request for specified information pertaining to a specified project.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.² You also submit documentation showing you notified AR Consultants, Inc. ("AR Consultants"), and the North Texas Municipal Water District (the "district") of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code §§ 552.304 (providing that interested party may submit written comments regarding why information should or should not be released), .305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from the

¹As you have not submitted a copy of the request for information for our review, we take our description from your brief to our office.

²We note the commission did not comply with the requirements of section 552.301(e) of the Government Code. *See* Gov't Code § 552.301(e). Nonetheless, because section 552.101 of the Government Code and third-party interests can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

district. We have considered the submitted arguments and reviewed the submitted representative sample of information.³ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304.

Initially, we address the requestor's assertion that the Act is inapplicable to her request. The Act is implicated whenever a requestor submits to a Texas governmental body a written request for inspection or copies of public information. *See id.* §§ 552.003(6) (defining "requestor"), .301(a) (after receiving "a written request for information," a governmental body must ask for a decision from the attorney general if it wishes to withhold that information). The Act only requires the request be made in writing. *See id.* § 552.301(c). Whether the requestor asserts a right to inspect public information under a law other than the Act generally does not affect the rights and duties of a governmental body to release or withhold public information under the Act. The requestor here made a written request to the commission to inspect public information; therefore, whether the commission can withhold that information from release is determined by the Act. Accordingly, we will address the commission's arguments under the Act against disclosure of the submitted information.

Initially, we note the district objects to disclosure of information the commission has not submitted to this office for review. This ruling does not address information that was not submitted by the commission and is limited to the information the commission has submitted for our review. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes. Section 191.004 of the Natural Resources Code provides:

- (a) Information specifying the location of any site or item declared to be a state archeological landmark under Subchapter D of this chapter is not public information.
- (b) Information specifying the location or nature of an activity covered by a permit or an application for a permit under this chapter is not public information.

³We 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) Information specifying details of a survey to locate state archeological landmarks under this chapter is not public information.

Nat. Res. Code § 191.004. We note the submitted information consists of an archeological report prepared by AR Consultants for the commission that is related to an archeology permit for the specified project, maps of the specified project, and other information related to the specified project. Upon review, we find the submitted information qualifies as “information specifying the location of any site or item declared to be a state archeological landmark” and “information specifying details of a survey to locate state archeological landmarks” for the purposes of section 191.004. Therefore, we conclude the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 191.004 of the Natural Resources Code.⁴

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 574123

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴As our ruling is dispositive, we need not address the district’s remaining arguments against disclosure of this information.

S. Alan Skinner, Ph.D.
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(w/o enclosures)

North Texas Municipal Water District
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