



**THE ATTORNEY GENERAL  
OF TEXAS**

September 24, 1987

**JIM MATTOX  
ATTORNEY GENERAL**

Mr. Larry R. Soward  
Executive Director  
Texas Water Commission  
P. O. Box 13087  
Austin, Texas 78711

Open Records Decision No. 479

Re: Whether certain information held by the Texas Water Commission is subject to disclosure under the Open Records Act, article 6252-17a, V.T.C.S.

Dear Mr. Soward:

The Texas Water Commission received a request under the Texas Open Records Act, article 6252-17a, V.T.C.S., for copies of documents relating to certain hydrological work performed by Texaco, Incorporated, at its Headlee Gas Processing Plant. The documents relate to Texaco's voluntary groundwater pollution-abatement activities, supervised by the Texas Railroad Commission pursuant to its jurisdiction under section 26.131 of the Texas Water Code. Texaco marked the documents "confidential" and voluntarily submitted them to the Texas Water Commission. The documents consist of several reports on groundwater quality at the Headlee Gas Processing Plant. The reports contain summaries and assessments of the hydrological work performed as well as numerous maps, graphs, and charts.

Under the Open Records Act, all information held as described in section 3(a) by a governmental body must be released unless the information falls within one of the act's specific exceptions to disclosure. By direct reference to a letter, from Texaco, submitted with your request you suggest that sections 3(a)(10) and 3(a)(13) protect these documents from required public disclosure. You also emphasize that the documents are marked "confidential" and that Texaco submitted them to the Water Commission on a voluntary basis.

Your emphasis on the designation of these documents as "confidential" and on the voluntary nature of their submission to the Water Commission must both be addressed. Information is not confidential under the Open Records Act simply because the party submitting the information anticipates or requests that the information be kept confidential. See Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 677 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). A governmental body cannot close access to public information by enacting a rule labeling the information "confidential." See id. Nor can a governmental body ordinarily make

information confidential by agreement or contract. Attorney General Opinion JM-672 (1987).

For similar reasons, the "voluntary" nature of the submission of these documents to the Water Commission will not alone remove the documents from the scope of the Open Records Act. Open Records Decision No. 142 (1976). For example, in Open Records Decision No. 294 (1981), the attorney general determined that documents voluntarily submitted to a state institution of higher education by a foreign country are within the scope of the Open Records Act. See also Open Records Decision No. 332 (1982). A vast amount of information is voluntarily submitted to governmental bodies. The Open Records Act clearly does not apply only to information solicited by a governmental body.

Texaco emphasizes both the voluntary submission of the documents and the voluntary nature of the pollution-abatement activities described by the documents. Texaco suggests that release of the documents will have a chilling effect on voluntary pollution-abatement activities. Although this suggestion may represent a valid policy argument, it does not constitute a legal basis for withholding information under the Open Records Act. See Open Records Decision No. 207 (1978) (letters agreeing not to engage in certain regulated activities are open). The dispositive question is whether the documents fall within one of the act's specific exceptions to disclosure.

As indicated, you suggest that sections 3(a)(10) and 3(a)(13) protect these documents. Section 3(a)(13) protects

geological and geophysical information and data including maps concerning wells, except information filed in connection with an application or proceeding before any agency or an electric log confidential under Subchapter M, Natural Resources Code.

The purpose of section 3(a)(13) is to protect the commercial value of geological and geophysical information.

Only two prior decisions of this office apply section 3(a)(13). The first decision, Open Records Decision No. 312 (1982), held that certain geological reports, studies, and evaluations relating to the Lower Colorado River Authority's plans for future lignite mining may be withheld under section 3(a)(13). In Open Records Decision No. 337 (1982), the attorney general addressed the availability of geological information held by the Texas Department of Water Resources that was submitted to assist the department in evaluating the groundwater contamination in the area and in settling upon possible remedial measures. These decisions deemed it unnecessary to "determine the precise reach" of section 3(a)(13).

Neither of these decisions addressed the fact that section 3(a)(13) protects from disclosure geological information "except information filed in connection with an application or proceeding before any agency" (emphasis added). This constitutes a very significant exception to section 3(a)(13). The precise reach of this exception to an exception from required disclosure may be difficult to ascertain.

By the plain language of section 3(a)(13), geological information that is filed in connection with an application or proceeding before a governmental agency is not protected from required public disclosure under section 3(a)(13) of the Open Records Act. This construction is reinforced by the fact that the legislature amended section 3(a)(13) in 1985 to create an additional, specific exception from disclosure for electric logs filed with the Railroad Commission under certain circumstances.<sup>1</sup> If geological information filed in connection with an application or proceeding before an agency were not generally public, this amendment would be rendered superfluous.<sup>2</sup> Consequently, the dispositive issue is whether this information has been filed in connection with "an application or proceeding before any agency." To the extent that it suggests otherwise, Open Records Decision No. 337 should not be followed.

As indicated, Texaco submitted these documents to the Railroad Commission because of the commission's jurisdiction under section 26.131 of the Texas Water Code. Your office received the documents directly from Texaco solely for informational purposes. Consequently,

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1. Subchapter M, section 91.551 et seq., of the Texas Natural Resources Code establishes a procedure whereby electric logs must be filed with the Railroad Commission under certain circumstances. Once a log is filed, it is a public record. If, however, a written request for confidentiality is made, the electric log may be withheld for a certain period of time.

The language of the 1985 amendment to section 3(a)(13) is somewhat inartful in that it appears to refer to the immediately preceding clause, which would make it an exception to exception 13 and thus, public. In light of the foregoing explanation, however, the legislature clearly intended that electric logs be confidential under the circumstances described. In other words, the amendment is an additional exception to the first clause of section 3(a)(13), not a part of the exception to the exception -- i.e. information that must be disclosed.

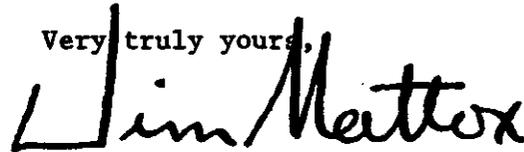
2. Of course, other statutes may make confidential geological information filed in connection with an application or proceeding before an agency. See, e.g., Tex. Water Code §52.323.

the question is whether Texaco filed the documents with the Texas Water Commission in connection with an application or proceeding before the Water Commission. Clearly, they were not. In fact, you indicate some uncertainty about why Texaco submitted them to your agency at all. Accordingly, they may be withheld under section 3(a)(13). This decision does not address your claim that section 3(a)(10) also protects this information or the availability of these documents from the Railroad Commission. Further, it does not address the availability of documents transferred directly from the Railroad Commission to the Water Commission.

S U M M A R Y

Under the Texas Open Records Act, article 6252-17a, V.T.C.S., all information held by governmental bodies must be released unless the information falls within one of the act's specific exceptions to disclosure. Information is not confidential under the act simply because the party submitting the information submits the information on a "voluntary" basis or requests that the information be kept "confidential." The information in question here, consisting of summaries and assessments of hydrological work as well as hydrological maps, graphs, and charts detailing the work, may be withheld under section 3(a)(13).

Very truly yours,



J I M M A T T O X

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