



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 23, 1995

Ms. Helen Stovall Gilbert
Staff Attorney
Texas Natural Resource
Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR95-1109

Dear Ms. Stovall:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request ID# 22361.

The Texas Natural Resource Conservation Commission ("TNRCC") has received three open records requests asking for laboratory test results and other information relating to Rio Grande Toxic Substance Study. You have provided one requestor¹ with the quarterly progress reports that have already been submitted to the United States Environmental Protection Agency ("EPA") Region IV Project Officer and have agreed to provide future reports as they are submitted. However, you are seeking to withhold the laboratory test results² under sections 552.101, 552.111, and 552.022. We agree that section 552.101 permits you to withhold this information. Because we resolve your request under section 552.101, we will not address the applicability of sections 552.111 and 552.022.

¹One requestor specifically asked for copies of these reports. We assume that the other requestors do not want copies of these reports or that you have provided the reports to them.

²You inform us that the laboratory test results are the only information, other than the quarterly progress reports, that the TNRCC possesses relating to the Rio Grande Toxic Substances Study.

You contend that the information requested is excepted from disclosure by section 552.101 because it is considered confidential under a treaty between the United States and Mexico. The treaty you refer to is a 1944 treaty between the United States and Mexico entitled "Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande." This treaty creates the International Boundary and Water Commission (IBWC), which consists of a United States Section and a Mexican Section. The treaty also requires that the decisions of the IBWC be recorded in the form of minutes and provides that the minutes are approved by both governments if neither government objects to them within 30 days. Minute number 289 of the IBWC approves the adoption of the "Joint Report of the Principal Engineers Relative to the Determination of the Presence of Toxic Substances in the Waters of the Rio Grande in its International Boundary Reach." This report presents a plan for a study of toxic substances present in the Rio Grande. The plan includes the following understanding:

There will be a complete exchange of data generated by both countries. The information cannot be used unilaterally by any of the parties without the prior consent of the other party expressed through the IBWC, before the obtained data can be used for purposes such as publication or establishment of additional regulatory actions. The reports generated by both countries should be reviewed and approved by the IBWC before publication.

The TNRCC became involved in this plan when it accepted a grant from the EPA to perform water quality studies. You claim that the TNRCC's contractual obligation with the EPA obligates the TNRCC to comply with the understandings adopted by the minute and that, because these understandings are agreements between the United States and Mexico under the treaty, the TNRCC is prohibited by federal law from releasing the requested information. You have also indicated that the complete report was made available to the public in September of 1994.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section applies to information made confidential by federal law as well as state law. See Open Records Decision No. 476 (1987) at 5. Information made confidential by federal law includes information made confidential by a federal statute, a federal regulation, or a treaty between the United States and a foreign country. *Id.*; *cf.* Open Records Decision No. 294 (1981) at 2. Furthermore, when information in the possession of a federal agency is considered confidential under federal law, the information remains confidential when it is shared with a governmental body in Texas. Open Records Decision No. 561 (1990) at 7.

The EPA considers the requested laboratory test results to be confidential under article 16 of the La Paz Agreement of 1983 and under the treaty entitled "Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande" by virtue of the understanding contained in the plan for the study. *See Letter from Myron O. Knudson, P.E., Director of Water Management Division, Region 6, U.S. Environmental Protection Agency, to Thomas A. Bower, Reporter, San Antonio Express-News.* Because you do not raise article 16 of the La Paz Agreement of 1983, we will not address it. However, we conclude that the treaty makes the requested laboratory test results confidential under federal law. Although the language of the understanding contained in the plan for study is susceptible to other interpretations, we believe that we should give additional weight to this interpretation because it was made by a federal agency involved in administering the treaty. Consequently, based on the EPA's interpretation of the understanding adopted by the IBWC, we conclude that you may withhold the test results under section 552.101.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Records Division

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Ref.: ID# 22361

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