



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 9, 1998

Ms. Judith Doran  
Open Records Coordinator  
Texas Parks & Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744-3291

OR98-2402

Dear Ms. Doran:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118621.

The Texas Parks and Wildlife Department (department) received a request for all documents related to bulldozing along Highway 118 just north of Fort Davis, Texas. You state that the department is withholding some of the responsive information because of sections 12.0251 and 12.103 of the Parks and Wildlife Code. You have not enclosed these records in your request for a decision. Open Records Letter Ruling No. 95-1104 at 2 (1995). This ruling, therefore, does not address the propriety of the release or withholding of these records. Gov't Code § 552.301. It appears, however, that you are uncertain about the confidentiality of three other responsive documents. You ask whether these submitted records fall under the protection of sections 12.0251 or 12.103 of the Parks and Wildlife Code.

Section 12.0251 provides as follows:

(a) Except as provided by this section, information is not subject to Chapter 552, Government Code, and may not be disclosed if the information is collected by the department in response to a landowner request relating to the specific location, species identification, or quantity of any animal or plant life that is:

(1) protected by this code; and

(2) located on private land that:

(A) is subject to a wildlife management plan developed cooperatively with the department for private land; or

(B) is the subject of a recommendation report prepared by the department for the landowner.

(b) The commission or the department may disclose information described by this section only to the landowner unless:

(1) the landowner consents to full or specified partial disclosure of information; and

(2) the consent is in writing and is attached to the plan or recommendation report.

(c) The department may release game census, harvest, habitat, or program information only if the information is summarized in a manner that prevents the identification of an individual or specific parcel of land and the landowner.

(d) The department may prepare not more than one original record of the information collected by the department and incorporated into a wildlife management plan, and the record becomes the property of the landowner. The department may retain one copy of the record. The retained copy may not be disclosed except as provided by this section.

(e) Except as provided by this subsection, the department shall send a copy of the information retained by the department relating to a landowner's property to the landowner and destroy the department's record of the information if the protected information status assigned by this section is revoked. The department may retain a copy of the information if the landowner consents in writing.

(f) In this section, a reference to the department includes a reference to an agent of the department.

(g) This section does not apply to a parcel of land that is not privately owned.

After examining the submitted information, it appears, although you have not explained, that the records involve an animal protected by the Parks and Wildlife Code. The records also appear to be the subject of either a wildlife management plan developed cooperatively with the department for private land, or a recommendation report prepared by the department for the landowner. Thus, much of the submitted information appears to have been collected by the department under section 12.0251. Such information is not subject to the Open Records Act. We have marked the information that appears to have been collected by the department in response to a landowner request under section 12.0251. This information may only be released as provided by section 12.0251(b), (c), (d), and (e).

You also assert that the information may be confidential under section 12.103. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 12.103 of the Texas Parks and Wildlife Code provides in pertinent part:

(a) To enforce the game and fish laws of the state and to conduct scientific investigations and research regarding wild game or fish, an authorized employee of the department may enter on any land or water where wild game or fish are known to range or stray. No action may be sustained against an employee of the department to prevent his entering on land or water when acting in his official capacity as described by this subsection.

(b) Except as provided by Subsection (d), the department may use information collected by an employee of the department on privately owned land only for the purposes of scientific investigations and research described in Subsection (a) and only if authorized in writing by the landowner or the landowner's agent. . . .

(c) Excepted as provided by Subsection (d), information collected under this section may only be reported or compiled in a manner that prevents the identification of an individual parcel or specific parcels of private property without the written consent of the landowner or the landowner's agent.

(d) The department may collect and enter data as necessary relating to the occurrence or harvest of natural resources in public land or water. The department may collect and report standardized annual wildlife survey information required by the Pitman-Robertson Wildlife Restoration Act (16 U.S.C. Section 669 et seq.).

(e) The department is liable to a private landowner for a civil penalty in the amount of \$1,000 for a violation of this section involving information collected by an employee of the department on the landowner's property. A landowner may bring suit to collect the penalty in the county in which the land is located or the county in which the landowner resides.

The same information that we have marked under section 12.0251 is protected from disclosure by section 12.103(b) in this instance. It appears that the department entered onto the private land in question "to conduct scientific investigations and research regarding wild game." Parks & Wildlife Code § 12.103(a). Consequently, the information collected on the privately owned land may only be used as provided by section 12.103. As the department is prohibited from using the collected information for any purpose other than those listed in the statute, we agree that this section makes confidential the information we have marked. As none of the release provisions in section 12.103 appear to be applicable, the department must withhold the marked information under section 12.103(b) of the Texas Parks and Wildlife Code as incorporated by section 552.101 of the Government Code. The remaining, unmarked, information must be released.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/nc

Ref: ID# 118621

Enclosures: Marked documents

cc: Mr. Scott Royder  
Director-Texas Peer  
P.O. Box 684753  
Austin, Texas 78766-4753  
(w/o enclosures)