



March 15, 2000

Ms. Janice Marie Wilson  
Associate General Counsel  
Texas Department of Transportation  
125 E. 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2000-1040

Dear Ms. Wilson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133792.

The Department of Transportation (the "DOT") received a request for the state permit and land lease agreement relating to a location 220 feet east of 6517 FM 1488 in Magnolia, Texas. You have provided the state permit. However, you claim that the land lease agreement may implicate the proprietary or property interests of Ms. Shelly D. Pate, Mr. Ernest L. Butler, Jr., and Mr. Rockey L. Butler, and you therefore seek a determination under section 552.305 of the Government Code as to whether the requested information is excepted from disclosure.

Section 552.305 relieves the governmental body of its duty under section 552.301(b) to state which exceptions apply to the information and why they apply only in circumstances where (1) a third party's privacy or property interests may be implicated, (2) the governmental body has requested a ruling from the attorney general, and (3) the third party or any other party has submitted reasons for withholding or releasing the information. Open Records Decision No. 542 at 3 (1990).

You state that you have provided notice to Ms. Pate and Messrs. Butler as required by section 552.305(d) of the Government Code. However, Ms. Pate and Messrs. Butler have not submitted arguments for withholding or releasing the information as required under 552.305(D)(2)(b). Because neither Ms. Pate nor Messrs. Butler submitted any arguments, we have no basis to conclude that Ms. Pate's or Messrs. Butler's proprietary interests will be harmed by the release of the requested documents. *See* Open Records Decision No. 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). Therefore, the DOT must release the land lease agreement to the requestor.

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.

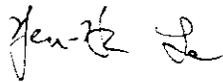
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/CS/ljp

Ref: ID# 133792

Encl. Submitted documents

cc: Mr. Kenneth Marcum  
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(w/o enclosures)