



September 11, 2000

Mr. Zach S. Brady
Jackson Walker L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701

OR2000-3490

Dear Mr. Brady:

On behalf of the Texas Boll Weevil Eradication Foundation, Inc. (the "Foundation"), you have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141136.

The Foundation received two requests for lists of cotton producers in certain areas of the state. One request is for the "Northern High Plains Boll Weevil Eradication producer list." The other is for the "mailing lists for the Southern High Plains/Caprock Zone (Lubbock area) and the Northern High Plains Zone (Plainview area)."¹ You ask whether the Foundation may release the requested lists to the requestors.²

The Foundation did not submit to this office a copy of the information requested or a representative sample of the information if the information is voluminous. The Public Information Act (the "Act") requires this submission whenever a governmental body seeks an open records ruling from this office. Gov't Code § 552.301. Because of this procedural shortcoming, the requested information is presumed to be public unless a compelling reason for withholding the information exists. *See id.* § 552.302. A compelling reason exists when information is made confidential by law. *See* Open Records Decision No. 150 (1977).

Section 552.101 of the Government Code contains an exception to the required public disclosure of information subject to the Act. This provision excepts from disclosure information that is made confidential by law, including information made confidential by

¹One requestor also seeks a copy of the Foundation's by-laws. As you raise no exception to the required public disclosure of the by-laws, we assume the Foundation has released them to the requestor. *See* Gov't Code § 552.221(a) (requiring "prompt" production of requested public information).

²The Foundation is a governmental body subject to the Public Information Act. *See* Agric. Code § 74.109 (i)(2).

statute. You raise section 74.114(j) of the Agriculture Code. Section 74.114(j) reads as follows:

Individual voter information, including an individual's vote in a referendum or board election conducted under this section, is confidential and is not subject to disclosure under the open records law, Chapter 552, Government Code.

You state that the United States Department of Agriculture Farm Services Agency (the "FSA") provided the information at issue to the Foundation.

In Open Records Letter No. 99-1582 (1999), this office determined that the Texas Department of Agriculture (the "department") must not release to the public a list of cotton producers eligible to vote in the Southern High Plains/Caprock Boll Weevil Eradication Zone Referendum because the list was made confidential by section 74.114(j). In that ruling, the department had informed us that the information on the requested list- each producer's name, address, farm number, and cotton acreage- was necessary information for the distribution of ballots and for the evaluation of referendum results. Furthermore, the department had stated that the FSA provided the information to the department for the purpose of creating ballots for a referendum to be conducted pursuant to chapter 74 of the Agriculture Code. Consequently, we agreed that the information at issue was "individual voter information" covered by section 74.114(j).

Unlike the department, the Foundation has offered no arguments that the requested lists of cotton producers are "individual voter information." Moreover, it is not otherwise clear to this office that the lists are subject to the statute. Without more information about the list, a list of cotton producers does not appear to be "individual voter information." Consequently, we cannot conclude that the lists are made confidential by section 74.114(j) of the Agriculture Code.³

You also raise section 552a (b) of title 5 of the United States Code for your confidentiality claim. However, this provision in the federal Privacy Act applies only to federal agencies and not to state agencies like the Foundation. *See* 5 U.S.C. §§ 552(f), 552a (a) (defining "agency" for purposes of the Privacy Act and the Freedom of Information Act).⁴

³We do not consider Open Records Letter No. 95-1284 (1995) to be dispositive of this request. That decision determined that the Foundation must release "a list of all growers in the Lower Rio Grande Valley Boll Weevil Eradication Zone who have not paid their assessment." Finding that the release of the information would not violate the common law right to privacy of the growers who had not paid their assessment, that decision concerned different information from that at issue here and did not address the applicability of section 74.114(j) of the Agriculture Code.

⁴You also raise a Freedom of Information Act ("FOIA") case that held that certain information regarding recipients of federal subsidies under the United States Department of Agriculture cotton price support program is not excepted from disclosure under exemption 6 of FOIA. *See Washington Post Co. v. U.S. Dept.*

In summary, the Foundation has not established that the requested information is deemed confidential by law. *See* Gov't Code § 552.301(e)(1)(A) (requiring governmental body to state reasons claimed exceptions apply to requested information). We therefore conclude that the Foundation must release the requested lists to the requestors.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

of Agriculture, 943 F.Supp.31 (D.D.C. 1996). We do not believe this case construing federal law applicable to federal agencies controls this Public Information Act request.

complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,

A handwritten signature in cursive script that reads "Kay Hastings".

Kay Hastings
Assistant Attorney General
Open Records Division

KHH/ljp

Ref: ID# 141136

cc: Mr. Mike Stevens
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