OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

April 3, 2002

Ms. Cathy Bradford
Open Records Coordinator
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3291

OR2002-1621

Dear Ms. Bradford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160788.

The Texas Parks and Wildlife Department (the "department") received a request for copies of a variety of information pertaining to the Landowner Incentive Program. The requestor also asks the department several questions in his request. We note that the Public Information Act does not require a governmental body to prepare answers to questions posed by a requestor. *See* Open Records Decision Nos. 563 at 8 (1990) (considering request for federal and state laws and regulations), 555 at 1-2 (1990) (considering request for answers to fact questions). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990). You state that you will provide the requestor with some responsive information. You claim, however, that the remaining requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes. Section 12.0251 of the Parks and Wildlife Code controls the disclosure of information that the department collects in the course of providing technical guidance to private landowners. Section 12.0251 provides:

> (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.

Parks & Wild. Code § 12.0251. Thus, section 12.0251 makes confidential information that the department collects in response to a landowner request relating to the specific location, species identification, or quantity of certain animals and plants. You state that the requested list of names was collected by the department from Landowner Incentive Program ("LIP") applications that were submitted by private landowners to the department so that those landowners could obtain assistance in protecting rare species on their property. You also state that private landowners who are applying for assistance under the LIP are required to provide their names through this application process. Based on our review of your arguments, we find that the requested list of names is information that the department collects from private landowners that is protected from disclosure under section 12.0251. *See* Parks and Wild. Code § 12.0251(a). Accordingly, we conclude that the department must withhold this information from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 12.0251 of the Parks and Wildlife Code.

Finally, you request that this office issue a "previous determination" that would permit the department in the future to withhold from disclosure information contained in LIP applications without the need of requesting a ruling from us about whether such information can be withheld from disclosure. We decline to issue such a previous determination at this time.

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

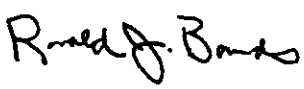
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may 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 complaints about over-charging must be directed to Hadassah Schloss at 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 160788

Enc: Submitted documents

cc: Mr. Bubba Hickman
Texas Watercraft Association
P.O. Box 692
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(w/o enclosures)