OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 31, 2003

Ms. Gail L. Allan
Deputy Counsel
Texas Water Development Board
P. O. Box 13231
Austin, Texas 78711-3231

OR2003-5286

Dear Ms. Allan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185196.

The Texas Water Development Board (the "board") received a request for pumpage data from water use surveys in an electronic database, to include borelog data used in the development of water models. You sought clarification of the request from the requestor, and you have submitted a copy of the requestor's written response. *See* Gov't Code § 552.222 (providing that governmental body may ask requestor to clarify request if what information is requested is unclear to governmental body); *see also* Open Records Decision No. 663 at 5 (1999)(discussing requests for clarification). You claim that portions of the requested information may be excepted from disclosure under section 552.101 of the Government Code in conjunction with section 16.012(m) of the Water Code. We have considered the exception you claim and reviewed the submitted representative sample of information.[1]

[1]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code 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. We note that the Seventy-eighth Legislature recently amended section 16.012(m) of the Water Code. House Bill 1378, which became effective on June 20, 2003, provides in relevant part:

> Section 16.012(m), Water Code, is amended to read as follows:
>
> > (m) The executive administrator may conduct surveys of entities using groundwater and surface water for municipal, industrial, power generation, or mining purposes at intervals determined appropriate by the executive administrator to gather data to be used for long-term water supply planning. Recipients of the survey shall complete and return the survey to the executive administrator. A person who fails to timely complete and return this survey is not eligible for funding from the board for board programs and is ineligible to obtain permits, permit amendments, or permit renewals from the commission under chapter 11. A person who fails to complete and return the survey commits an offense that is punishable as a Class C misdemeanor. This subsection does not apply to survey information regarding windmills used for domestic and livestock use.

Act of June 20, 2003, 78th Leg., R.S., H.B. 1378, § 3. The amendment eliminated the portion of the text that previously excepted from public disclosure surveys obtained by the board from nongovernmental entities. *See* Acts 2001, 77th Leg., R.S. ch. 966, § 2.15, 2001 Tex. Gen. Laws 1999, *amended by* Act of June 20, 2003, 78th Leg., R.S., H.B. 1378, § 3. Thus, section 16.012(m) no longer specifically excepts "surveys" from the requirements of section 552.021 of the Government Code.

After reviewing your arguments and the submitted information, we find that the information maintained by the board in electronic format, which includes information taken from the surveys, is not made confidential by section 16.012(m). *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality). Thus, we conclude that the information at issue may not be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 16.012(m) of the Water Code, and must be released to the requestor in its entirety.

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 Dep't of Pub. 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 Texas Building and Procurement 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,

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 185196

Enc: Submitted documents

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