



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 29, 2003

Mr. Jason Martinson
Open Records Coordinator
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3291

OR2003-9325

Dear Mr. Martinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193301.

The Texas Parks and Wildlife Department (the "department") received a request for information relating the department's program for development of motor vehicle recreation sites pursuant to section 90.009 of the Parks and Wildlife Code. You advise that the present request pertains to a grant application submitted by the Texas Motorized Trails Coalition in connection with the purchase of a parcel of land in Uvalde County to be used as a public motorized recreation park. In particular, the requestor asks for the following information:

- 1) a copy of the program including any drafts thereof, and any and all documents relating to or pertaining to the motor vehicle recreation program required by SB 155;
- 2) any and all documents evidencing cooperation of political subdivisions, landowners, nonprofit groups, and other interested persons in identifying and facilitating the development of motor vehicle recreation sites in Texas, and in particular the proposed site;
- 3) a copy of the application for grant and any and all documents evidencing a review or analysis thereof;

4) a copy of the environmental assessment, environmental impact statement, and/or mitigating plan for endangered species; and

5) any and all documents relating or pertaining to motor vehicle recreation sites in Texas, including but not limited to, all correspondence, e-mails, memorandums, policies, and/or guidelines.

You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.105 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As a preliminary matter, the department has not submitted information responsive to all portions of the request, nor have you raised any exceptions to disclosure for this information. Accordingly, we assume that, apart from the information you have submitted to this office for our review, information responsive to the present request has been released to the requestor, to the extent it exists. If not, the department must release such information immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances).

We next address your claimed exceptions with respect to the submitted information. You contend that the habitat assessment submitted as Attachment B is excepted from disclosure under section 552.101 of the Government Code as information made confidential by law. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. You contend that the information in Attachment B is made confidential under section 12.103 of the Parks and Wildlife Code. Section 12.103 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. . . .

(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) except 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.*).

You contend that the habitat assessment in Attachment B consists of information relating to a scientific investigation as contemplated in section 12.103(a). Based on your representations and our review, we agree that the information in Attachment B is subject to section 12.103. Furthermore, as section 12.103(b) prohibits the department from making use of the collected information for any purpose other than those listed in the statute, we determine that the information in Attachment B is confidential pursuant to section 12.103. None of the release provisions in section 12.103 appear to apply in this instance. Thus, we determine that the department must withhold Attachment B under section 552.101 of the Government Code as information made confidential by law.

We now turn to your claimed exception for the information submitted as Attachment C. You contend that this information is excepted from disclosure under section 552.105 of the Government Code, which excepts information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Gov't Code § 552.105. Section 552.105 protects a governmental body's planning and negotiating position with respect to particular transactions. Open Records Decision No. 564 at 2 (1990). Accordingly, the exception protects information relating to the location, appraisals, and purchase price of property only until the transaction is either completed or discontinued. Open Records Decision Nos. 357 at 3 (1982), 310 at 2 (1982). You state that Attachment C contains an appraisal of the property at issue in the present request, which has not been formally acquired by the purchaser, the Texas Motorized Trails Coalition. In this case, because the department is not a party to the transaction at issue, we find that the submitted appraisal does not relate to the department's planning and negotiating position in a real property transaction for purposes of section 552.105. *See* Open Records Decision No. 564 (1990). Accordingly, we determine that the appraisal information in Attachment C is not excepted from disclosure under section 552.105. As you raise no other exception to

disclosure for this information, we determine that the department must release the information in Attachment C to the requestor.

In summary, the department must withhold Attachment B pursuant to section 552.101 of the Government Code in conjunction with section 12.103 of the Parks and Wildlife Code. The completed appraisal report in Attachment C, and the remainder of the requested information, must be released 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 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/sdk

Ref: ID# 193301

Enc: Submitted documents

c: Ms. Susan E. Potts
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