



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 19, 2004

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

OR2004-1223

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# 196414.

The Texas Parks and Wildlife Department (the "department") received a request for the names and addresses of floater cabin permit holders. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.¹

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. You assert that the requested information is considered to be confidential under section 11.030 of the Parks and Wildlife Code. Section 11.030 provides in part:

- (a) The name and address and a telephone, social security, driver's license, bank account, credit card, or charge card number of a person who purchases customer products, licenses, or services from the department may not be disclosed except as authorized under this section[.]
- (b) Chapter 552, Government Code, does not apply to customer information described by Subsection (a).

¹This letter ruling assumes that the submitted sample of responsive information is truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

(c) The [parks and wildlife] commission by rule shall adopt policies relating to:

- (1) the release of the customer information;
- (2) the use of the customer information by the department; and
- (3) the sale of a mailing list consisting of the names and addresses of persons who purchase customer products, licenses, or services.

(d) The commission shall include in its policies a method for a person by request to exclude information about the person from a mailing list sold by the department.

(e) The commission or department may disclose customer information to a federal or state law enforcement agency if the agency provides a lawfully issued subpoena.

Parks & Wild. Code § 11.030(a)-(e). You inform us that section 32.051 of the Parks and Wildlife Code requires an applicant for a floating cabin permit to pay a \$300.00 fee. We therefore agree that the requested information consists of “customer information,” as defined by section 11.030(a). We note, however, that section 11.030 does not make this information confidential for the purposes of section 552.101 of the Government Code. *See* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure). Rather, section 11.030(b) specifically excludes “customer information” from the purview of chapter 552 of the Government Code. Furthermore, section 11.030(c) provides that “the [parks and wildlife] commission by rule shall adopt policies relating to . . . the release of the customer information[.]” Parks & Wild. Code § 11.030(c)(1). Therefore, the department must adhere to the policies adopted by the commission in determining whether and to what extent the requested “customer information” may be released to the requestor.

You also ask this office to issue a ruling that would constitute a previous determination with regard to future requests for information pertaining to floating cabin permit holder information. *See* Gov’t Code § 552.301(a); Open Records Decision No. 673 (2001). We decline to do so 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).

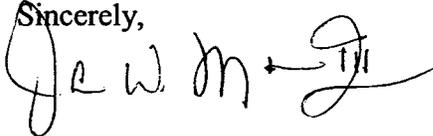
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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,

A handwritten signature in black ink, appearing to read "J W Morris III". The signature is written in a cursive style with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 196414

Enc: Submitted documents

c: Mr. Michael Danks
c/o Mr. Jason Martinson
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3291
(w/o enclosures)