



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 14, 2004

Mr. Mel Davis
Special Projects Coordinator
Texas State Soil & Water Conservation Board
P.O. Box 658
Temple, Texas 76503

OR2004-10588

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 214865.

The Texas State Soil and Water Conservation Board (the "board") received a request for all "records related to any water quality management plan submitted, developed and/or obtained" by two named individuals and specified properties. 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 reviewed the submitted information.

Section 552.101 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. Section 201.006 of the Agriculture Code provides in part:

(a) Except as provided by this section, information collected by the state board¹ or a conservation district² is not subject to Chapter 552, Government Code, and may not be disclosed if the information is collected in response to

¹ The "state board" is defined as the State Soil and Water Conservation Board. Agric. Code § 201.002(7).

² A "conservation district" is defined as a soil and water conservation district. Agric. Code § 201.002(1).

a specific request from a landowner or the landowner's agent or tenant for technical assistance relating to a water quality management plan or other conservation plan if the assistance is to be provided:

(1) under this code; and

(2) on private land that:

(A) is part of a conservation plan or water quality management plan developed cooperatively with the state board or conservation district; or

(B) is the subject of a report prepared by the state board or conservation district.

Agric. Code § 201.006(a) (footnotes added). Section 201.006(b), (e), (f), and (g) provide that information may be released to certain parties, but it is our understanding that none of these qualified release provisions are applicable in this request.

You state that the submitted information was "collected and compiled in response to individual request[s] from [the two named individuals] for technical assistance relating to a Water Quality Management Plan on their private land and that the assistance" was provided under section 201, Agricultural Code. Based upon your representations and our review, we agree that the records at issue must be withheld from disclosure pursuant to section 552.101 in conjunction with section 201.006 of the Agriculture Code.³

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

³ We note that section 201.006(c) provides that the state board or conservation district has the option of disclosing "in a manner that prevents the identification of a particular tract of land, the owner of the tract, or the owner's agent or tenant, a summary of information collected by the state board or conservation district" concerning certain types of information.

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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 214865

Enc. Submitted documents

c: Ms. Lori Burton
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(w/o enclosures)