ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2005

Mr. John Foster
Inter-Agency Communications
Texas State Soil & Water Conservation Board
P. O. Box 658
Temple, Texas 76503-0658

OR2005-04111

Dear Mr. Foster:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 224256.

The Texas State Soil and Water Conservation Board (the "board") received a request for information pertaining to a specified property. You inform us that the board does not maintain some of the requested information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received). You claim that the remainder of the requested information, which you have submitted for our review, is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you have submitted. We have also considered comments received from the owner of the specified property. *See* Gov't Code § 552.304 (providing that member of public may submit comments stating why information should or should not be released).

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 board[1] or a conservation district[2] is not subject to Chapter 552, Government Code, and may not be disclosed if the information is collected in response to 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 [an] individual request from [the property owner] for technical assistance relating to a Water Quality Management Plan on their private land and that the assistance from [the board] 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.

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[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).

[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.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,

Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 224256

Enc. Submitted documents

c: Ms. Carol Paselk
P. O. Box 937
Sulphur Springs, Texas 75483
(w/o enclosures)

Mr. James W. Litzler
McLeroy, Litzler, Rutherford, Bauer & Friday, P.C.
P. O. Box 657
Sulphur Springs, Texas 75483
(w/ submitted documents)