



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2005

Ms. Noelle C. Letteri
Legal Services Division
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2005-05330

Dear Ms. Letteri:

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# 226311.

The Texas General Land Office (the "land office") received a request for information concerning an employee's "work product and study" associated with the land office's audit of a named company's pricing of natural gas and related business activities. You state that the land office will release the majority of the requested information. You claim that the submitted 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.

Initially, we must address the land office's obligations under the Act. Under section 552.301(b), a governmental body that wishes to withhold information from public disclosure must request a ruling from this office not later than the tenth business day after the date of receiving the written request. Within fifteen days of receiving the request, the governmental body must submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). You inform us that the land office received the present request on March 16, 2005. However, you did not request a ruling from this office or submit the required information until April 12, 2005. Consequently, we find that the land office failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason for non-disclosure exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). As section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address your arguments under this exception.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes such as section 52.134 of the Natural Resources Code, which provides:

Copies of contracts for the sale or processing of gas and subsequent agreements and amendments to those contracts shall be filed in the land office within 30 days after the contracts, agreements, or amendments are made. These contracts and agreements received by the land office shall be held in confidence by the land office unless otherwise authorized by the lessee.

Nat. Res. Code § 52.134. You state, and the submitted information reflects, that the submitted information includes contracts and related agreements for the sale or processing of gas. You advise us that the land office has not received authorization from the lessee to release this information. Based upon your representations and our review of the submitted information, we find that the submitted contracts and related agreements, which we have marked, are made confidential under section 52.134 of the Natural Resources Code; therefore, the land office must withhold them under section 552.101 of the Government Code in conjunction with section 52.134 of the Natural Resources Code. However, the remaining information is not made confidential under section 52.134. Accordingly, it may not be withheld pursuant to this provision.

We note, however that the remaining information contains bank account numbers to which section 552.136 of the Government Code is applicable.¹ Section 552.136 provides in part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We have marked the bank account numbers that the land office must withhold pursuant to section 552.136.

We also note that the remaining submitted information contains e-mail addresses to which section 552.137 may be applicable. Section 552.137 provides as follows:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Section 552.137 excepts certain e-mail addresses of members of the public that are not within the scope of section 552.137(c), unless the relevant members of the public have affirmatively consented to the release of the e-mail addresses. We note that the e-mail addresses at issue may belong to employees of an entity with which the land office has a contractual relationship. *See* Gov't Code § 552.137(c)(1). Because we are unable to discern whether the e-mail addresses at issue, which we have marked, fall within the scope of section 552.137(c), we must rule conditionally. To the extent the marked e-mail addresses belong to members of the public who have not affirmatively consented to their release, the land office must withhold these e-mail addresses under section 552.137. However, to the extent the marked e-mail addresses belong to employees of an entity with which the land office has a contractual relationship, the marked e-mail addresses may not be withheld under section 552.137.

In summary, the marked contracts and related agreements must be withheld under section 552.101 of the Government Code in conjunction with section 52.134 of the Natural Resources Code. The marked bank account numbers must be withheld under section 552.136 of the Government Code. To the extent the marked e-mail addresses belong to members of the public who have not affirmatively consented to their release, the land office must withhold these e-mail addresses under section 552.137 of the Government Code. However, to the extent the marked e-mail addresses belong to employees of an entity with which the land office has a contractual relationship, the marked e-mail addresses may not be withheld under section 552.137 and they must be released to the requestor along with the remaining submitted information.

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, 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,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 226311

Enc. Submitted documents

c: Mr. Don Ray George, P.E.
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c/o Ms. Noelle C. Letteri
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