



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 13, 2005

Mr. F. Lawrence Oaks
Executive Director
Texas Historical Commission
P.O. Box 12276
Austin, Texas 78711-2276

OR2005-08318

Dear Mr. Oaks:

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# 232349.

The Texas Historical Commission (the "commission") received a request for information related to Native American camp sites in the Robertson County area and a historical marker for the community of Hammond. You state that information concerning the historical marker has been provided to the requestor. We understand you to claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.¹

Initially, we address your assertion that the June 6, 2005 facsimile request sent to the commission was not a proper request. Section 552.301(c) provides that "a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission." Gov't Code § 552.301(c). We understand you to assert that the facsimile was sent to neither the

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

commission's public information officer nor the officer's designee. Thus, we agree that the June 6, 2005 facsimile request was not a proper written request, and therefore did not require the commission to respond. *Id.* § 552.301 (governmental body's duty to request a ruling from the attorney general arises only after it receives a written request).

We now turn to your arguments regarding the submitted information. 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. Section 191.004 of the Natural Resources Code provides:

(a) Information specifying the location of any site or item declared to be a state archeological landmark under Subchapter D of this chapter is not public information.

(b) Information specifying the location or nature of an activity covered by a permit or an application for a permit under this chapter is not public information.

(c) Information specifying details of a survey to locate state archeological landmarks under this chapter is not public information.

Nat. Res. Code § 191.004(a), (b), (c). You assert that the camp sites about which the requestor has inquired "are state archeological landmarks" as defined by section 191.092(a) of the Natural Resources Code. *See* Nat. Res. Code § 191.092(a). We understand you to contend that public disclosure of the submitted documents may create a substantial risk of harm, theft, or destruction to the resources or to the area or place where the resources are located. *See* Gov't Code § 442.007(e). Upon careful review, we find that the submitted records qualify as "information specifying the location of any site or item declared to be a state archeological landmark" for the purposes of section 191.004. Therefore, we conclude that the commission must withhold the submitted information under section 191.004(a) of the Natural Resources Code in conjunction with section 552.101 of the Government Code.²

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

²Because our ruling is dispositive, we need not address your remaining claims.

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); *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 Office of the Attorney General 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. 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jpa

Ref: ID# 232349

Enc. Submitted documents

c: Mr. Kenneth W. Swick
P.O. Box 276
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(w/o enclosures)