



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 11, 2006

Ms. Noelle Letteri  
Staff Attorney  
Texas General Land Office  
P.O. Box 12873  
Austin, Texas 78711-2873

OR2006-09094

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# 256370.

The Texas General Land Office (the "land office") received a request for the billing and supporting documentation relating to a specific mineral file. You state that you have released some of the requested information, but 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we must address the land office's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). Within fifteen business days after receiving the request, a governmental body must submit the requested information along with written comments explaining why the stated exceptions apply. *See* Gov't Code § 552.301(c). You claim that the land office received the present request on May 22, 2006. However, the copy of the email request that you submitted is dated April 26, 2006, and you did not request a ruling from this office until June 7, 2006. *Cf.* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common

or contract carrier, or interagency mail). 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 requested information is public and must be released unless a compelling reason exists for withholding the information from disclosure. *See* Gov't Code § 552.302; *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). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under law. Open Records Decision No. 150 (.977). Because section 552.101 can provide a compelling reason to withhold information, we will address your arguments regarding this section.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *See* Gov't Code § 552.101. This section encompasses information that another statute makes confidential. Section 52.140 of the Natural Resources Code provides in part:

(a) All information secured, derived, or obtained during the course of an inspection or examination of books, accounts, reports, or other records, as provided in section 52.135 of this code, is confidential and may not be used publicly, opened for public inspection, or disclosed, except for information set forth in a lien filed under this chapter and except as permitted under Subsection (d) of this section.

(d) This section does not prohibit:

(1) the delivery of information made confidential by this section to the lessee or its successor, receiver, executor, guarantor, administrator, assignee, or representative;

(2) the publication of statistics classified to prevent the identification of a particular audit or items in a particular audit;

(3) the release of information which is otherwise available to the public; or

(4) the release of information concerning the amount of royalty assessed as a result of an examination conducted under Section 52.135 of this code or the release of other information which would have been properly included in reports required under Section 52.131 of this code.

Nat. Res. Code § 52.140(a), (d). You state that the submitted information was provided by Texas Independent to the land office “in accordance with § 52.135, Texas Natural Resources Code, during a [land office] investigation of Texas Independent’s royalty payments to determine if they had correctly paid their royalties.” You also state that the land office “used this information to conduct the investigation.” You further assert that the submitted information does not fall within any of the exceptions to confidentiality listed in section 52.140(d). The requestor, however, claims that the submitted information was provided to the land office pursuant to section 52.131(c)(4) of the Natural Resources Code, and is thus not subject to the confidentiality provision of section 52.140. *See id.* § 52.131(c) (providing that royalty payments due to the state must be accompanied by various documents and records verifying the minerals produced and the royalty amount due). In the alternative, the requestor asserts that the submitted information falls within the exceptions to confidentiality in subsections 52.140(d)(3) and (4).

The question of whether the submitted information was provided to the land office under section 52.131 or 52.135 of the Natural Resources Code and of whether the submitted information falls within the exceptions to confidentiality in subsections 52.140(d)(3) and (4) are questions of fact. This office cannot resolve factual issues in the opinion process. *See* Open Records Decision 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). We must rely on a governmental body’s representations with regard to such issues, unless the contrary is clearly shown as a matter of law. *See* Open Records Decision No. 564 (1990). Upon review of the submitted information, we are unable to determine as a matter of law that the information either was provided to the land office under section 52.131 or falls within the exceptions to confidentiality in subsections 52.140(d)(3) and (4). Therefore, based on the land office’s representations, we conclude that the land office must withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 52.140(a).

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); *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,



José Vela III  
Assistant Attorney General  
Open Records Division

JV/ir

Ref: ID# 256370

Enc. Submitted documents

c: Mr. David W. Scott  
406 Keenland Dr.  
Georgetown, Texas 78626  
(w/o enclosures)