



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 4, 2008

Ms. Kathryn H. Gurley
Attorney at Law
P.O. Box 729
Friona, Texas 79035

OR2008-00148

Dear Ms. Gurley:

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# 298715.

The City of Bovina (the "city") and the Bovina Economic Development Board (the "board"), which you represent, received two requests for information pertaining to the wind data collected for the city and maintained by the board during a specified time period. You claim that the submitted information is excepted from disclosure under sections 552.104, 552.110, 552.113, and 552.131 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted sample of information.² We have also received and considered comments from one requestor. *See* Gov't Code § 552.304 (interested party may submit written comments as to release of information).

Initially, we address one requestor's contention that the city previously released portions of the requested information to two third parties. We note that section 552.007 of the

¹We note that the city raises section 552.110 of the Government Code in its brief, however, the city provides no explanation of how this exception is applicable to the submitted information. Accordingly, we do not address the city's assertion under this exception. *See* Gov't Code §§ 552.301, .302.

²We 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.

Government Code prohibits selective disclosure of information. Thus, a governmental body cannot withhold information from a requestor that it has voluntarily made available to another member of the public unless the information is confidential by law. *See* Gov't Code § 552.007(b). As a general rule, if a governmental body releases information to one member of the public, the Act's exceptions to disclosure are waived unless the information is deemed confidential under the Act. Open Records Decision Nos. 490 (1988), 400 (1983). Although protection for information covered by the Act's permissive exceptions, such as section 552.104 can be waived, protection for information deemed confidential by law ordinarily is not waived through "selective disclosure." *See* ORD 490, 400.

In this instance, you state that a former board employee contacted and entered into discussions, allegedly on behalf of the board, with wind farm developers. You state the board was not aware of the former employee's release of the requested information to Windkraft Nord at the time of its release. You further explain neither the board nor the city authorized or voluntarily released the data to any member of the public. As for release of the data to Penn Wind, the board explains it recently entered into an agreement with Penn Wind to share some of the data. However, when the board and the city received the request for information, neither entity had released any data to the public. Based on these representations, we conclude the board and the city have not released the information to the public, and therefore, have not waived their exceptions.

You argue that section 552.113 of the Government Code excepts the wind data from public disclosure. Section 552.113 provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if it is:

...

(2) geological or geophysical information or data, including maps concerning wells, except information filed in connection with an application or proceeding before an agency[.]

Gov't Code § 552.113(a)(2). In Open Records Decision No. 627 (1994), this office concluded that section 552.113(a)(2) protects from public disclosure only commercially valuable geological and geophysical information regarding the exploration or development of natural resources. Open Records Decision No. 627 at 3-4 (1994) (overruling rationale of Open Records Decision No. 504 (1988)); *see also* Open Records Decision No. 669 (2000). In that decision, this office explained that the phrase "information regarding the exploration or development of natural resources" means "information indicating the presence or absence of natural resources in a particular location, as well as information indicating the extent of a particular deposit or accumulation." *Id.* at 4 n.4. You explain that the information at issue is commercially valuable because the data is used to determine the presence or absence of the natural resource and the extent that the resource is available on a consistent basis. You also state that the board is attempting to negotiate the development of a wind farm that will

provide some direct benefit to the city. As such, upon review, we find that the board and the city have demonstrated that the information at issue is commercially valuable geological or geophysical information regarding the exploration or development of natural resources. Accordingly, we conclude the board and the city must withhold the wind data pursuant to section 552.113.³

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

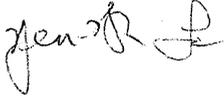
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/mcf

Ref: ID# 298715

Enc. Submitted documents

c: Ms. Mindy R. Neal
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