



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 11, 2008

Mr. Mel Davis
Special Projects Coordinator
Texas State Soil & Water Conservation Board
P. O. Box 658
Temple, Texas 76503

OR2008-12548

Dear Mr. Davis:

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# 321619.

The Texas State Soil and Water Conservation Board (the "board") received a request for all information since January 1, 2004 pertaining to: (1) correspondence, reports, proposals, or agreements between the board and six named entities regarding the use of chemical herbicides to control Carrizo cane in a specified area; (2) correspondence showing the events of and participants at a specified meeting; and (3) the names and job titles of any state or federal officials who attended the same specified meeting. You indicate you will provide a portion of the requested information to the requestor. You claim the submitted conservation plan documents are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code 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 201.006 of the Agriculture Code, which provides in part:

(a) Except as provided by this section, information collected by the state board¹ or a conservation district² 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.

...

(c) The state board or a conservation district may disclose, 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 regarding:

(1) the number of acres of land that are in a particular conservation plan;

(2) the number of acres of land that are subject to a particular conservation practice; or

(3) other conservation program information.

Agric. Code § 201.006(a), (c) (footnotes added). Sections 201.006(b), (e), (f), and (g) provide information may be released to certain parties, but it is our understanding that none of these qualified release provisions are applicable in this instance.

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).

You state the submitted information was collected and compiled in response to a specific request for technical assistance from the landowner at issue relating to a conservation plan on the owner's private land, and that the assistance from the board was provided under chapter 201 of the Agricultural Code. Based upon your representations and our review, we agree the submitted conservation plan documents must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 201.006 of the Agriculture Code.

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). If the governmental body does not file suit over 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.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 321619

Enc. Submitted documents

c: Dr. Richard Tansey
2804 Riverplace Drive
Arlington, Texas 76006
(w/o enclosures)