



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 10, 2010

Mr. Terry Colley
Deputy Director
Texas Historical Commission
P.O. Box 12276
Austin, Texas 78711-2276

Mr. Joe H. Thrash
Assistant Attorney General
Environmental Protection and Administrative Law Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2010-08474

Dear Mr. Colley and Mr. Thrash:

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# 382216.

The Texas Historical Commission (the "commission"), which Mr. Thrash represents, received a request for communications exchanged between the commission and other government agencies pertaining to a specified project. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We

have considered the exception you claim and reviewed the submitted representative sample of information.¹

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 office has repeatedly held that the transfer of confidential information between governmental agencies does not destroy the confidentiality of that information. Attorney General Opinions H-917 (1976), H-836 (1974), Open Records Decision Nos. 561 (1990), 414 (1984), 388 (1983), 272 (1981), 183 (1978). These opinions recognize the need to maintain an unrestricted flow of information between state agencies. In Open Records Decision No. 561, we considered whether the same rule applied regarding information deemed confidential by a federal agency. In that decision, we noted the general rule that section 552 of title 5 of the United States Code, the federal Freedom of Information Act ("FOIA"), applies only to federal agencies and does not apply to records held by state agencies. ORD 561 at 6. Further, we stated that information is not confidential when in the hands of a Texas agency simply because the same information is confidential in the hands of a federal agency. *Id.* However, in the interests of comity between state and federal authorities and to ensure the flow of information from federal agencies to Texas governmental bodies, we concluded that: "when information in the possession of a federal agency is 'deemed confidential' by federal law, such confidentiality is not destroyed by the sharing of the information with a governmental body in Texas. In such an instance, [section 552.101] requires a local government to respect the confidentiality imposed on the information by federal law." *Id.* at 7.

You explain that, in this instance, the information at issue was provided to the commission by the United States Army Corps of Engineers (the "COE"). You assert, and provide documentation showing, that the COE considers the information at issue confidential under the deliberative process privilege found in section 552(b)(5) of title 5 of the United States Code and under the personal privacy provisions found in sections 552(b)(6) and 552(b)(7)(c) of title 5 of the United States Code. *See* 5 U.S.C. § 552(b)(5), (6), (7)(c). Therefore, we conclude that the commission must withhold the information at issue under section 552.101 of the Government Code in conjunction with federal law.

This letter ruling is limited to the particular information 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 information or any other circumstances.

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.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 382216

Enc. Submitted documents

c: Requestor
(w/o enclosures)