



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 30, 2010

Mr. Mark Wolfe  
Executive Director  
Texas Historical Commission  
P.O. Box 12276  
Austin, Texas 78711-2276

OR2010-11480

Dear Mr. Wolfe:

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# 388718.

The Texas Historical Commission (the "commission") received a request for information related to the Trinity River Parkway or Trinity River Levees or Floodway.<sup>1</sup> You state you have released some of the requested information. You 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 representative sample of information.<sup>2</sup>

Initially, we note some of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No.

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<sup>1</sup>As you have not submitted a copy of the request for information, we take our description from the correspondence from the United States Army Corps of Engineers you submitted with your brief.

<sup>2</sup>We 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.

2010-08474 (2010), in which we ruled that the commission must withhold the information at issue under section 552.101 in conjunction with federal law. We have no indication the law, facts, or circumstances on which this prior ruling was based have changed. Accordingly, to the extent the requested information is identical to that previously ruled upon by this office, the commission must continue to rely on Open Records Letter No. 2010-08474 as a previous determination and withhold the identical information under section 552.101 in conjunction with federal law. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information was not previously requested and ruled upon by this office, we will address your arguments against disclosure of the information.

Next, you acknowledge, and we agree, the commission failed to request a ruling within the statutory time period prescribed by section 552.301(b) of the Government Code. *See* Gov't Code § 552.301(b). We also note that the commission failed to comply with section 552.301(e) of the Government Code. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). In this instance, you state the commission received the request for information on April 7, 2010. Therefore, the commission's fifteen-business-day deadline was April 28, 2010. However, you did not submit comments stating the reasons why the stated exceptions apply or a representative sample of the information requested until May 26, 2010. Further, as of the date of this letter, you have failed to submit a copy of the written request for information. Consequently, we find the commission also failed to comply with the requirements of section 552.301(e) in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where third party interests are at stake or where some other source of law makes the information confidential. Open Records Decision No. 150 at 2 (1977). You inform us, and have provided correspondence

reflecting, that the United States Army Corps of Engineers (the "COE") asserts an interest in the information at issue. Therefore, we will consider whether the commission may withhold the information on behalf of the COE. You also raise section 552.101 of the Government Code. Because section 552.101 can provide a compelling reason to overcome the presumption in section 552.302, we will also consider your arguments under section 552.101 of the Government Code.

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 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.

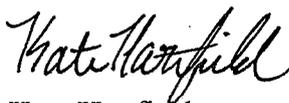
You explain that the information at issue was provided to the commission by the COE. You assert, and have provided correspondence from the COE explaining, that the COE considers the requested information confidential under the deliberative process privilege found in section 552(b)(5) of title 5 of the 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 requested information under section 552.101 of the Government Code in conjunction with federal law.

In summary, to the extent the requested information is identical to that previously ruled upon by this office, the commission must continue to rely on Open Records Letter No. 2010-08474 as a previous determination and withhold the identical information under section 552.101 of the Government Code in conjunction with federal law. To the extent the requested information is different from that previously ruled upon by this office, the commission must withhold the requested information 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.

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](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,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 388718

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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