



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2011

Mr. Ken Levine
Director
Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711-3066

OR2011-01970

Dear Mr. Levine:

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# 408583.

The Sunset Advisory Commission (the "commission") received a request for all written comments regarding the Texas Water Development Board that was received by the commission prior to the publication of a specified report and all written comments received by the commission at a specified hearing.¹ You state you have released some responsive information to the requestor. You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹The commission sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

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.

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 325.0195 of the Government Code. Section 325.0195 provides in relevant part:

(a) A working paper, including all documentary or other information, prepared or maintained by the commission staff in performing its duties under this chapter or other law to conduct an evaluation and prepare a report is excepted from the public disclosure requirements of Section 552.021.

Id. § 325.0195(a). You inform us the submitted information consists of the commission’s working papers that were created, collected, and maintained by the commission during its evaluation of the Texas Water Development Board. You further state this evaluation was authorized under chapter 325 of the Government Code. *See id.* § 325.008(a)(3) (“Before January 1 of the year in which a state agency subject to this chapter and its advisory committees are abolished, the commission shall . . . conduct a review of the agency based on the criteria provided in Section 325.011 and prepare a written report[.]”). Accordingly, we find the submitted information is confidential under section 325.0195(a) of the Government Code and must be withheld under section 552.101 of the Government Code.

You ask this office to issue a previous determination permitting the commission to withhold information subject to section 325.0195 of the Government Code without the necessity of requesting a decision from this office. *See id.* Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). After due consideration, we have decided to grant your request. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) that working papers, including all documentary or other information, prepared or maintained by the commission staff in performing its duties to conduct an evaluation and prepare a report are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 325.0195 of the Government Code.³ The commission may consider this ruling a previous determination for such information for as long as the elements of law, fact, and circumstances on which this ruling is based do not change so as to no longer support our conclusion. *See* ORD 673 at 7.

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

³We note, however, that the written report prepared by the commission under section 325.008(a)(3) of the Government Code is a public record. *See* Gov’t Code § 325.008(b).

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,

A handwritten signature in black ink, appearing to read "Debbie K. Lee", with a long horizontal flourish extending to the right.

Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/dls

Ref: ID# 408583

Enc. Submitted documents

c: Requestor
(w/o enclosures)