



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2012

Mr. Mark Wolfe
Executive Director
Texas Historical Commission
P.O. Box 12276
Austin, Texas 78711-2279

OR2012-15430

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# 466184.

The Texas Historical Commission (the "commission") received a request for maps of the proposed route of the Keystone Pipeline through Jefferson County and any findings from the Rule 106 review which indicate an adverse effect from the proposed pipeline on any historical sites located in Jefferson County. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. You also indicate release of the requested information may implicate the interests of SWCA Environmental Consultants, ENSR, AECOM, Cardno ENTRIX, TransCanada, and the United States Department of State Bureau of Oceans and International Environmental and Scientific Affairs. Accordingly, you notified these third parties of the request and of their right to submit arguments to this office as to why the requested information should not be released. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances).* We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we must address the commission's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

section 552.301(b), the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e), the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the state 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. *See id.* § 552.301(e). You state the commission received the request for information on June 8, 2012. Thus, the ten-business-day deadline for requesting a ruling from this office was June 22, 2012, and the fifteen-business-day deadline was June 29, 2012. However, the envelope in which you requested a ruling from this office and submitted the information required by section 552.301(e) bears a postmark of July 23, 2012. *See id.* § 552.308 (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the commission failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of the Act results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason 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); Open Records Decision No. 319 (1982). The presumption information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because section 552.101 of the Government Code and the interests of third parties can provide compelling reasons for non-disclosure, we will consider the applicability of these arguments to 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 section 191.004 of the Natural Resources Code, which provides:

- (a) Information specifying the location of any site or item declared to be a state archeological landmark under Subchapter D of this chapter is not public information.
- (b) Information specifying the location or nature of an activity covered by a permit or an application for a permit under this chapter is not public information.

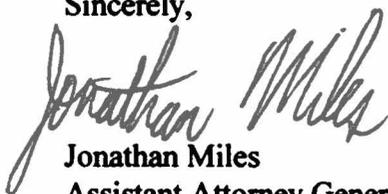
(c) Information specifying details of a survey to locate state archeological landmarks under this chapter is not public information.

Nat. Res. Code § 191.004 (footnote omitted). You state the information at issue relates to activities covered by an Antiquities Permit issued by the commission and consists of maps, archeological reports, and correspondence concerning the location and nature of archeological sites and deposits. Based on your representations and our review, we agree the information at issue qualifies as information specifying the location of any site or item declared to be a state archeological landmark, information specifying the location or nature of an activity covered by a permit or an application for a permit, or information specifying details of a survey to locate state archeological landmarks for purposes of section 191.004. Therefore, we conclude the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 191.004 of the Natural Resources Code.

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, 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 466184

Enc. Submitted documents

c: Requestor
(w/o enclosures)