



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 28, 2012

Ms. Ashley R. Allen  
Staff Attorney  
Texas General Land Office  
P.O. Box 12873  
Austin, Texas 78711-2873

OR2012-19137

Dear Ms. Ashley Allen:

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# 472155.

The Texas General Land Office (the "GLO") received a request for all communications between named individuals regarding Rock Creek Ranch (the "ranch") since May 2005; all documents related to the sale of a portion of the ranch; all internal communications related to the events leading up to the purchase of the ranch; and communications related to the appraisal of the ranch for the purpose of the 2005 purchase. You state some information has been released. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which you state constitutes a representative sample.<sup>1</sup> We have also received and considered comments from the requestor's law firm. *See* Gov't Code § 552.304 (interested third party may submit comments to this office stating why the information at issue should or should not be released).

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<sup>1</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.

Initially, we note the requestor excluded documents that are not in reference to the GLO's November 2005 purchase of Rock Creek Ranch from the scope of her request. Accordingly, these types of information are not responsive to the present request for information. This ruling does not address the public availability of non-responsive information, and the GLO need not release such information in response to this request.

Next, we note the GLO failed to meet the deadlines set forth in section 552.301 of the Government Code with respect to a portion of the submitted information. 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 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. Gov't Code § 552.301(e)(1)(A). You state the GLO received the present request for information on September 10, 2012. Accordingly, the GLO's fifteen-business-day deadline under section 552.301(e) was October 1, 2012. However, the GLO did not submit a portion of the responsive information, or a representative sample, until October 3, 2012. Consequently, with respect to the information submitted on October 3, we find the GLO failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body overcomes this presumption by demonstrating a compelling reason to withhold the information. *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. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Although you raise sections 552.107 and 552.111 of the Government Code for a portion of the information, which was untimely submitted, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process). Thus, in failing to comply with section 552.301, the GLO has waived its arguments under sections 552.107 and 552.111, and may not withhold the information at issue on these bases. However, because section 552.101 can provide a

compelling reason to withhold information, we will consider your argument under this exception for both the timely and untimely 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. Section 552.101 encompasses section 11.086(a) of the Natural Resources Code, which provides:

Information relating to the development, location, purchase price, or sale price of real property developed, purchased, or sold by or for the School Land Board, Veterans' Land Board, land office, or commissioner under authority granted by this code, including a contract provision related to the development, purchase, or sale of the property, is confidential and exempt from disclosure under [the Act], until all deeds for the property that are applicable to the transaction or series of related transactions are executed and until all substantive performance or executory requirements of applicable contracts have been satisfied. Information that is confidential and exempted from disclosure under this subsection includes an appraisal, completed report, evaluation, or investigation conducted for the purpose of locating or determining the purchase or sale price of the property, or any report prepared in anticipation of developing, purchasing, or selling real property.

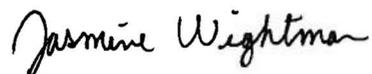
Nat. Res. Code § 11.086(a). You state the information at issue was prepared in anticipation of the purchase, sale, or development of a portion of the ranch, to determine the estimated market value. Although portions of the property have been sold, you state other portions have been leased and the GLO maintains numerous easements on the property. You inform us that the development of the ranch continues and a series of transactions related to this development have yet to be complete. You further state the ranch remains a Permanent School Fund property eligible to be sold or further developed. Based on your representations, we conclude the information at issue is confidential under section 11.086 of the Natural Resources Code and must be withheld pursuant to section 552.101 of the Government 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](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,

A handwritten signature in cursive script that reads "Jasmine Wightman".

Jasmine D. Wightman  
Assistant Attorney General  
Open Records Division

JDW/akg

Ref: ID# 472155

Enc. Submitted documents

c: Requestor  
(w/o enclosures)