



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 3, 2012

Mr. James G. Nolan  
Open Records Attorney  
Texas Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2012-19353

Dear Mr. Nolan:

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# 472537 (Comptroller ID# 8585848312).

The Texas Comptroller of Public Accounts (the "comptroller's office") received a request for all certificates of inclusion ("CIs") finalized prior to the date of the request under the Texas Conservation Plan for the Dunes Sagebrush Lizard and all pending or draft CIs that are currently awaiting approval or that may be finalized within a specified period of time. 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>1</sup>

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 information that other statutes make confidential, such as section 403.454 of the Government Code. Section 403.452 of the Government Code grants the comptroller's office the authority to "promote compliance with

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<sup>1</sup>We 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.

federal law protecting endangered species and candidate species in a manner consistent with this state's economic development and fiscal stability[.]” *See id.* §§ 403.452(a), .451 (defining “endangered species” and “candidate species”). The comptroller’s office has the authority to develop or coordinate the development of a habitat conservation or candidate conservation plan and may implement and monitor these plans. *See id.* § 403.452(a)(1), (6). Section 403.454 provides:

Information collected under this subchapter by an agency, or an entity acting on the agency’s behalf, from a private landowner or other participant or potential participant in a habitat conservation plan, proposed habitat conservation plan, candidate conservation plan, or proposed candidate conservation plan is not subject to [the Act] and may not be disclosed to any person, including a state or federal agency, if the information relates to the specific location, species identification, or quantity of any animal or plant life for which a plan is under consideration or development or has been established under this subchapter. The agency may disclose information described by this section only to the person who provided the information unless the person consents in writing to full or specified partial disclosure of the information.

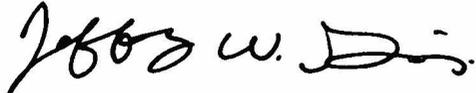
*Id.* § 403.454. You explain the comptroller’s office has coordinated and developed a candidate and habitat conservation plan for the Dunes Sagebrush Lizard (“conservation plan”) to promote conservation of the Dunes Sagebrush Lizard under the Endangered Species Act of 1973. You state that the requested CIs were collected by Texas A&M University and its contractor on behalf of the comptroller’s office from private landowners and other participants and/or potential participants in the conservation plan. You explain “the CIs at issue are, in their entirety, records that relate to the specific location, species identification, or quantity of any animal for which a conservation plan has been established.” We understand the participants and potential participants have not consented to the release of their information. Upon review, we agree the submitted information is confidential and must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 403.454 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 black ink, appearing to read "Jeffrey W. Giles". The signature is fluid and cursive, with the first name being the most prominent.

Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/dls

Ref: ID# 472537

Enc. Submitted documents

c: Requestor  
(w/o enclosures)